

AMERICAN BAR ASSOCIATION JOURNAL

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CURRENT EVENTS

Court of International Justice Organized

On February 15 the Permanent Court of International Justice was organized at the Hague. The first meeting was held in the great Hall of Justice of the Peace Palace and was an unusually brilliant and impressive affair. Congratulatory letters and telegrams from statesmen, public bodies and churches throughout the world were read. Then the judges in turn repeated a pledge to exercise their powers and duties honorably, faithfully, impartially and conscientiously. Judge Moore of the United States and Judge Finlay of Great Britain spoke English. All the others spoke French. Addresses were delivered by Senhor da Cunha, Sir Eric Drummond, Jonkheer van Karnebeek, Mynheer Patyn, Burgomaster of the Hague, and Judge Loder.

Commenting on the formal opening of the Permanent Court, John Bassett Moore, the American member of that body, said:

I am not accustomed either to cherish illusions or to encourage others to cherish them. The court, to fulfill its high mission, must have the support of the governments of the world and of public opinion, being in this respect like all other human institutions.

I shall not be discouraged if at the outset the court is not overburdened with business. The Supreme court of the United States at its first regular session had, I believe, no cases for its docket; nor, later, when business slowly increased, were its decisions always effectual.

We live in a world of change. The worthiest and sublimest efforts may be destined, if not to failure, at least to disappointment. It is better to have hoped and lost than never to have hoped at all. Even the most beneficent movements must meet reverses, but we can never wholly fail if in the day of adversity we recall the injunction to get up and try it again. Nor in the present instance is there any reason even to think of failure.

Meeting of Patent Law Association

The American Patent Law Association held an all day session at its headquarters in Washington February 4, 1922. The meeting was largely attended and members from many sections of the country took active part in the discussions. One of the main subjects considered was the Patent Office Relief Bill pending before the Senate. This bill was sponsored before Congress by the Association and with its passage by the Senate February 14, 1922, now goes to the President.

In the evening a dinner was tendered Chief Justice Taft. Mr. Wallace R. Lane, Chicago, President of the Association, presided and introduced the following speakers: Hon. Charles H. Robb, Justice of the Court of Appeals, District of Columbia, subject "Patent Appeals"; Hon. Julius M. Mayer, Judge United States Circuit Court of Appeals for the Second Circuit, subject "The Judge and the Patent Case"; Hon. William Howard Taft, Chief Justice of the United States, subject "Patent Office Relief and the Federal Judiciary."

Report of Chicago Crime Commission

The Chicago Crime Commission has published its third annual report. It shows that there has been a steady decrease in major crimes of violence—murder, burglary and robbery—during the three years the Commission has been active. Murders dropped from 330 in 1919 to 190 in 1921; burglaries for the corresponding period from 6,108 to 4,774; robberies for the same term from 2,912 to 2,558. The Crime Commission is not a mere investigating body, but an extremely active organization which adopts the policy of cooperating as closely as possible with officials charged with the administration of criminal justice and uttering no adverse criticism unless sustained by convincing evidence. Where specific matters come to its at-

tention which require action it quietly brings them to the notice of the proper official.

In the report of President Edwin W. Sims credit is given to the proper officials for the lessening in the number of escapes resulting from the failure of the police to apprehend criminals, and of the escapes of criminals by means of straw bail. He states also that the miscarriage of justice as the result of continuances has been somewhat reduced, but they still continue to be a great menace. The most popular thoroughfare of escape still open at present, in his opinion, is the insanity avenue. "The insanity craze has reached the limit," he says. "One unfortunate phase of the situation is that it is being popularized by officials and others who have become lost in a maze of theory."

In his report submitted at the same time Operating Director Henry Barrett Chamberlin declares that "Privation and want actuate so few crimes in Chicago as to be almost negligible. Chicago criminals are criminals by choice. They participate in unlawful enterprises because it is profitable. While the punishment of the individual murderer, gun man, burglar, bandit, automobile thief and other social vulture is necessary as a crime deterrent, it is of no permanent value unless the law acts with equal certainty and swiftness against all violators. And ably assisting these are the jury fixer, the man who refuses to prosecute, the man who evades jury service, the professional bondsman, and that most infectious agent of all—the unethical criminal lawyer."

Division of National Income

An article in the *Economic World* for February 11, 1922, gives the results of research work undertaken by the National Bureau of Economic Research, organized in New York in 1920, into the question of the distribution of the current income of the United States. The calculation shows that the national income increased in dollars from \$31,300,000,000 in 1910 to \$66,000,000,000 in 1919, but a calculation of the value of the national product for 1919 at 1913 prices shows a value of only \$37,300,000,000, or about a normal growth of 20 per cent for the nine years.

An estimate of the average income per capita for the period from 1909 to 1918 inclusive shows an increase from \$319 to \$586; but the latter figure is reduced to \$372 per capita when its purchasing power at the price level of 1913 is considered.

Perhaps the most interesting of these calculations is that showing the division of the combined net value of the product of mines, factories and land transportation between earnings of employees and returns for management and the use of property. The results show that in the year 1919 68.7 per cent of these returns went in wages and salaries and 31.3 per cent went to management and payment for use of the property. In 1918, however, there was a notable change in the ratio, wages and salaries receiving 77.3 per cent and management and property 22.7 per cent.

Nineteenth Amendment Sustained

The spirited controversy as to the validity of the Nineteenth, or Suffrage, Amendment has been brought to an end by a unanimous decision of the United States Supreme Court, delivered by Justice Brandeis in the case of Oscar Leser and others brought from the State of Maryland. Another test case from New York filed

by Charles S. Fairchild was dismissed at the same time by the court on the ground that he had no standing to bring such a proceeding and did not present a case within the jurisdiction of the court. The issues involved in the Maryland case have been set forth on several occasions in the JOURNAL.

Judge Landis Resigns

On February 18 Judge Landis presented his resignation as United States District Judge to President Harding, to take effect March 1. In explanation he stated that "there aren't enough hours in the day for me to handle the courtroom and various other jobs I have taken on. I am going to devote my attention in the future entirely to baseball." It is stated that rumors of the resignation have been current for months and intimate friends have known for some time that it was imminent. It is also stated that the judge would have resigned some time ago but for the attack made on him in the senate.

Power of Governor to Pardon in Contempt Case

The power of a governor to pardon in cases of contempt was challenged a few months ago in Wisconsin, and an account of the controversy was contained in the December issue of the JOURNAL. Now the same question has arisen in Illinois, as a result of pardons issued by Governor Small to certain members of the Chicago School Board who had been found guilty of contempt of court by Judge Scanlan of that city—which finding was upheld by the Appellate Court. The members of the School Board were found guilty of contempt on the ground that they had attempted to block the order of the judge to reinstate a certain gentleman as superintendent of the schools. Later, Governor Small issued his pardons and the sheriff found himself in a quandary as to whom to obey. Out of consideration for his dilemma an arrangement was made to take the matter to the Supreme Court of the State.

Basic Principles in Labor Adjustment

Attorney General Daugherty announced on February 24 that the executive heads of the international organization of Bricklayers, Masons and Plasterers had signed and executed a consent to a far-reaching court decree concerning their activities, which are said to have been a disturbing influence to the building industry of the country. The decree followed an investigation by Col. William Hayward, federal district attorney of New York, in conjunction with the Department of Justice, into the building trades and housing situation. It lays down and adopts four basic principles: No limit to the productive capacity of the individual workman within the working day or any other given time; no limit to the right of employers to purchase their material whenever, wherever and from whomsoever they choose; no favoritism by organized labor toward employers or trade associations or contractors' associations and no discrimination against independent employers not members of such associations; the labor organization not to permit its use by material men or contractors or subcontractors as an instrument for the collection of debts or enforcement of the payment of alleged claims.

CONFERENCE ON LEGAL EDUCATION

Representatives of National, State and Local Bar Associations Discuss Duty of Lawyer to Public and Client and Declare for Higher Standards for Admission to Bar

RESOLVED; That the National Conference of Bar Associations adopts the following statement in regard to legal education:

1. The great complexity of modern legal regulations requires for the proper performance of legal services lawyers of broad general education and thorough legal training. The legal education which was fairly adequate under simpler economic conditions is inadequate to-day. It is the duty of the legal profession to strive to create and maintain standards of legal education and rules of admission to the bar which will protect the public both from incompetent legal advisers and from those who would disregard the obligations of professional service. This duty can best be performed by the organized efforts of bar associations.

2. We endorse with the following explanations the standards with respect to admission to the bar, adopted by The American Bar Association on September 1, 1921:

Every candidate for admission to the bar should give evidence of graduation from a law school complying with the following standards:

(a) It shall require as a condition of admission at least two years of study in a college.

(b) It shall require its students to pursue a course of three years duration if they devote substantially all of their working time to their studies, and a longer course, equivalent in the number of working hours, if they devote only part of their working time to their studies.

(c) It shall provide an adequate library, available for the use of the students.

(d) It shall have among its teachers a sufficient number giving their entire time to the school to insure actual personal acquaintance and influence with the whole student body.

3. Further, we believe that law schools should not be operated as commercial enterprises, and that the compensation of any officer or member of its teaching staff should not depend on the number of students or on the fees received.

We agree with the American Bar Association that graduation from a law school should not confer the right of admission to the bar, and that every candidate should be subjected to examination by public authority other than the authority of the law school of which he is a graduate.

5. Since the legal profession has to do with the administration of the law, and since public officials are chosen from its ranks more frequently than from the ranks of any other profession or business, it is essential that the legal profession should not become the monopoly of any economic class.

6. We endorse The American Bar Association's standards for admission to the bar because

we are convinced that no such monopoly will result from adopting them. In almost every part of the country a young man of small means can, by energy and perseverance, obtain the college and law-school education which the standards require. And we understand that in applying the rule requiring two years of study in a college, educational experience other than that acquired in an American college may, in proper cases, be accepted as satisfying the requirement of the rule, if equivalent to two years of college work.

7. We believe that the adoption of these standards will increase the efficiency and strengthen the character of those coming to the practice of law, and will therefore tend to improve greatly the administration of justice. We therefore urge the bar associations of the several states to draft rules of admission to the bar carrying the standards into effect and to take such action as they may deem advisable to procure their adoption.

8. Whenever any state does not at present afford such educational opportunities to young men of small means as to warrant the immediate adoption of the standards, we urge the bar associations of the state to encourage and help the establishment and maintenance of good law schools and colleges, so that the standards may become practicable as soon as possible.

9. We believe that adequate intellectual requirements for admission to the bar will not only increase the efficiency of those admitted to practice but will also strengthen their moral character. But we are convinced that high ideals of professional duty must come chiefly from an understanding of the traditions and standards of the bar through study of such traditions and standards and by the personal contact of law students with members of the bar who are marked by a real interest in younger men, a love of their profession and a keen appreciation of the importance of its best traditions. We realize the difficulty of creating this kind of personal contact, especially in large cities; nevertheless, we believe that much can be accomplished by the intelligent cooperation between committees of the bar and law school faculties.

10. We therefore urge courts and bar associations to charge themselves with the duty of devising means for bringing law students in contact with members of the bar from whom they will learn, by example and precept, that admission to the bar is not a mere license to carry on a trade, but that it is an entrance into a profession with honorable traditions of service which they are bound to maintain.

First Session

THE sessions of the National Conference of Bar Associations, held in Washington, D. C., February 23 and 24, resulted in the affirmation of a new and higher standard for admission to the bar. The discussions went into every phase of the question and the interest was intense throughout the entire proceedings. Mr. Root's impassioned appeal for action during the last session lent a dramatic touch. Forty-four State Bar Associations, over one hundred local associations, two Canadian Bar Associations, and a number of Universities were represented. As President Severance pointed out, the conference marked an innovation in the activities of the American Bar Association, and a great step toward a closer affiliation between the national and state associations.

Judge Clarence N. Goodwin, Chairman of the National Conference of Bar Association Delegates, opened the proceedings with an address in which he set forth the work which stamped the conference as a body peculiarly fitted to take up consideration of the proper standard for admission to the bar. Passing to the important question to be considered, he found in the last session of the Conference on the Limitation of Armament, held in that very hall, a clue of principle which must and should guide the present conference in its deliberations. All that had come from the Arms Conference, in his opinion, came from the conscious or unconscious application of the great fundamental principles of democracy.

"It occurred to me then," he continued, "that this same principle of human equality must be a decisive factor in all our deliberations. We affirm that we believe in equality before the law. But how can equality before the law be possible when the rich and powerful are represented in court by highly educated, thoroughly trained and most competent members of the profession, while a large part of the poor and ignorant, who frequently find themselves in court opposed to the more fortunate, are so often represented by ignorant, untrained and incompetent men who have, through the laxity of our methods, been commissioned by the State with authority to counsel and advise and represent them.

"The shrewd and powerful men and interests of large means are able to know who are competent and who are not, but how is the poor man, the ignorant man, to make any just estimate of who is capable of properly advising and representing him?

"During my years as a trial Judge I was frequently distressed by the fact that one side or the other in the case before me was so incompetently represented by counsel, or represented by such ignorant counsel that, owing to the learning and skill of the attorneys on the other side, it seemed impossible to get the case properly before the court, or keep error out of the record.

"During my years in the Appellate Court, we found ourselves constantly confronted with records which showed such palpable and unmistakable errors as to make it necessary to reverse the case, although it obviously had merit, and although it was almost a moral certainty that had the errors been eliminated, the verdict and judgment would have been the same. . . .

"It seems little less than a crime for the State to certify to the competency, to the learning and to the ability of a man who represents his fellow citizens

in court who is not learned nor able nor competent to represent or advise anybody in any legal matter.

"This question of what requirements for admission to the Bar are to be adopted has never been in our hands, and we are not as a body responsible for the standards that have been established. We do, however, have an influence and to the extent that we have an influence, we are responsible, and to the extent that we are responsible we have a moral duty to investigate and act."

Mr. Root Presents the Proposals

He then introduced the Hon. Elihu Root as the speaker chosen by the American Bar Association to present its program to the conference. Mr. Root was received with great applause. He stated that it was his pleasant duty to present a certain action of the American Bar Association upon which that association appealed to the conference for sympathy and assistance. It consisted in resolutions designed to improve the standard of the incoming bar, and was a result of many years of discussion, many committees, many reports, many drafted resolutions. For twenty-five years the American Bar Association had acted under a continually growing feeling that the bar was not functioning quite right, and during all that time local associations, state associations had been appointing committees, receiving reports and passing resolutions based upon the same feeling.

He then recalled the request, nine years ago, of the American Bar Association that the Carnegie Foundation for the Advancement of Teaching make a study of legal education; the reorganization by the American Bar Association of its branch devoted to legal education, and the appointment by the council of this new section of a special committee to see what could be done to make the bar function better; the activities of this committee in the way of securing the best opinions of representative members of the profession from all over the country as to what should be done; and, finally, the adoption of the resolutions presented by the Section of Legal Education at Cincinnati last summer and their approval by an immense majority of the association itself. After setting out the resolutions, which have been printed on various occasions in the JOURNAL, he pointed out that the first part of them was an expression of opinion by the American Bar Association, which, of course, could not be changed by any action of any other body. What was hoped was that the conference would range itself by the side of the American Bar Association to give effect to that opinion.

The second part of the resolution directed action of two kinds. First, that the council of the Section of Legal Education be directed to publish from time to time the names of those law schools which complied with the above standards and of those which did not, and to make such publications available as far as possible to incoming law students. That was going on at present, and the secretary of the section had already had gratifying results from the publication of these resolutions in the way of responses from law schools, a large part of which had already announced their intention of making their qualifications conform to the qualifications expressed in the opinion of the American Bar Association. But it was the second method of giving effect to this opinion that had brought them to the

conference. It was the direction of the association to cooperate with state and local bar associations to urge upon the duly constituted authorities of the several states the adoption of the above requirements, and the direction for the calling of this conference, for the purpose of uniting state and local bodies in an effort to create conditions in the several states favorable to the adoption of these principles, which had brought them.

"Now, this appeal to you and to your associations," he said, "is not without a basis in past history, for the local bar associations have long been appointing committees, passing resolutions in some way to improve the standing and efficiency of the Bar, and particularly of the incoming Bar, and this is an appeal for that union which will make it possible for all the resolutions and all the good intentions of the state and local associations for twenty years past to become efficient and active.

"There will be opposition, there is opposition to some of these provisions, and in order to determine how far the opinion of the American Bar Association is praiseworthy and sound and should be supported it is important to look a little at the trouble which it seeks to cure. That there is trouble I think every one of us feels. It may not be trouble in this particular county, in this particular Bar, in this or that state; but it is trouble in so large a part of the Bar that it affects the whole. You cannot have too many rotten spots in an apple and have the rest of it good. We have for years been hearing just such things as Judge Goodwin tells us out of his experience on the Bench, about the sacrifice of clients' interests, increased expense, the continual delay, the sending back of cases for new trial, notwithstanding their merits, owing to the inefficiency and incompetency of members of the Bar. Those reports have been coming from all over and they have blackened the name of the Bar. They have led to the public observing the manifold defects of our administration of justice. Its delays, its technicalities, its repeated and oft-repeated appeals and reviews, its long delays which prevent the honest man of modest means from getting his rights, while the rich man, with abundant income, and the sharper, with subtle and adroit ingenuities, can put off indefinitely the granting of justice—that is the charge against us, against you and me; and, what is worse, it's a charge against the great profession of the law, and, what is worse, it's a charge against the law, and what is worse still, it's a charge against our free institutions, that is sapping the faith, the confidence, the loyalty of the millions of people in this land in those institutions.

"Apart from those evidences, there is enough in the general conditions to satisfy anyone that either the Bar or somebody else is not quite doing its full duty. Vastly complicated our practice has become. The enormous masses of statutes and decisions have made it so. Twelve thousand to fifteen thousand public decisions in a year of courts of last resort; twelve thousand to fifteen thousand more statutes from our Congress and legislatures—a wilderness of laws and a wilderness of adjudications that no man can follow — require not less but more ability; not less but more learning; not less but more intellectual training in order to advise an honest man as to what his rights are and in order to get his rights for him. Are we

doing it? No. The bar stays still. It has been talking twenty-five years. The American Bar Association has been talking about it for twenty-five years, appointing committees, listening to reports and filing them. This is the first attempt, in any authoritative and conclusive way, to do something. I am here to ask you to help in it.

"Not only the practice of law becomes complicated, but the development of the law has become difficult. New conditions of life surround us; capital and labor, machinery and transportation, social and economic questions of the greatest, most vital interest and importance, the effects of taxation, the social structure, justice to the poor and injustice to the rich—a vast array of difficult and complicated questions that somebody has got to solve, or we here in this country will suffer as the poor creatures in Russia are suffering because of a violation of economic law, whose decrees are inexorable and cruel. Somebody has got to solve these questions. How are they to be solved? I am sure we all hope they will be solved by the application to the new conditions of the old principles of justice out of which grew our institutions; but to do that you must have somebody who understands those principles, their history, their reason, their spirit, their capacity for extension, and their right application. Who is to give that? Who but the bar? Is the bar giving it? Is the bar getting it? The public judgment is not."

Conditions had so changed from Abraham Lincoln's day that not only was the problem different and the opportunity different, but the material was becoming different. The speaker said he had been for many years a member of the Character Committee in the city of New York appointed by the Appellate Division of the Supreme Court of that department. And year after year they were impressed with the difficulty of really determining anything about the character of the young men whom they were admitting to the bar. The old system had passed away under which the old lawyer in whose office a boy had studied could give assurance to the court as to the moral character of the applicant, and in its place had come the law school. Two things, in his opinion, lay at the bottom of the difficulty here. One was that the old system which had passed away was a system that gave moral qualities to the boy. He took in, through the pores of his skin, the way of thinking and feeling, the standards of morality and honor, of equity, of justice that prevailed in the law office. The other was that the examination is wholly incapable of testing moral quality. The young men he had been talking about coming through into the bar were subtle, adroit and skillful enough, but there was no evidence that they had the needed moral qualities, and evidences were coming in all the time of a great influx of men into the bar with intellectual acumen and no moral qualities. How were they to get them? Not by an examination, not by going back to the law office. That was impossible. He continued:

"There is another thing to be considered. A very large part of these new accessions, and particularly in the large cities, are of young men who have come in recent years from the countries of eastern Europe, from the Continent of Europe, who have come from countries where there was a highly developed jurisprudence and having, necessarily, by inheritance, all those predilections and fundamental

ideas which differentiate the Continental systems of jurisprudence from the Anglo-American system. Do not underestimate the importance of that. I am not criticising them, of course. I am not saying that the systems of the countries from which they come are not just as good as ours. I am drawing no comparison. But they are different from ours. Do not mistake that. I had many years ago to argue a case in the Supreme Court of the United States, the case of Guyot and Hilton—you will find it along about thirty years ago in the reports—involving the effect of a French judgment. After very careful and long-continued study I came to this conclusion: That an American stood a poor chance in a French court and a Frenchman stood a poor chance in an American court. I have thought of that thing a thousand times since, when engaged in international affairs, and I have seen the reasons illustrated over and over and over again.

"The great trouble in international affairs is that the people of two different countries have two different sets of pre-natal ideas in the backs of their heads. Every word that is said and printed and written receives one meaning against the background of one set of ideas and another meaning against the background of the other set of ideas. If you have a week's conference, you can spend six days in trying to understand each other's 'back of the head' ideas. And if you can get a little glimmer of an idea of what the other fellow is really thinking about, then you can settle your difficulty in five minutes.

"These young men to whom I have referred come here, and they are coming to our Bar by the tens of thousands, with Continental ideas born in them. No cramming for an examination will get them out. They are not to be learned or dislearned out of a book. Those ideas can be modified or adapted to our ideas only by contact with life—contact with American life—taking in, in the processes of life, some conception of what the American thought and feeling and underlying basis of honesty and justice are. Now, how can you get it? The idea of this resolution, that the law school should require as one of its conditions two years in an American college is an effort, and the only one that has been suggested, to require that these young men shall go and spend an appreciable time under such conditions that they will take in the morale of our country before they shall go to the bar.

"Now I want to say two things about that: The first is that I believe in the fundamental conceptions of justice and honor and good faith out of which our American institutions grew. They were the conceptions that were brought out by struggle and sacrifice during the long centuries of the Anglo-Saxon fight for freedom. They received a new birth, a new commission upon the American continent and an enlarged conception of its individual liberty and manhood, of individual right, of justice, of duty to the state, of the common good, entertained by men who had no superiors, who looked up to no government above them, but were the government, through their own organization. That was the complex of conceptions that gave the formative power that has made this continent, that has carried the common law of England from ocean to ocean; that has made individual enterprise of America, carried on by sovereign citizens, dealing with justice

and rendering justice, a mightier force than the dictates of any empire or any sovereign.

"I said a few moments ago that I do not criticise any Continental view of jurisprudence. But I do take leave to say that we want our view here in this country to continue.

"I do not want anybody to come to the bar which I honor and revere, chartered by our government to aid in the administration of justice, who has not any conception of the moral qualities that underlie our free American institutions; and they are coming, today, by the tens of thousands.

"I know of no way that has been suggested to assure to any real degree the achievement of such a view on the part of an aspirant to the Bar except this suggestion that they should be required to go to an American college for two years and mingle with the young American boys and girls in those colleges, be a part of their life, and learn something of the community spirit of our land, at its best; learn something of the spirit of young America in its aspirations and its ambitions, seeking to fit itself for greater things. That is what they will get in an American college.

"Somebody sent me the other day a card that has been circulated from some night school suggesting that this was a snobbish proposal. Who sent it knew little of the American college. We are told that this will keep poor young men out—keep them out! Do you suppose such a thing would have kept Lincoln out? I have been within the last year to three American universities, each one of which had over eleven thousand students. I never saw a more inspiring spectacle than I did in going into the great reading room in the University of California and seeing there from a thousand to two thousand young men and women all at work, reading. Oh, my heart grew lighter in its view of the future in the faith of that spectacle!

"I know American colleges, and I have seen for sixty years the plain boys trudging over the hills to get an education in order that they might climb the heights of fame and fortune, in order that they might slake the thirst for learning, in order that they might make themselves something bigger and better; and I say to you there is no better democracy in this world than the democracy of the American college. And that is the great thing that is learned there; for in it the youth pass the most formative years of their lives before the spectacle of men who are happy in the pursuit of learning and of literature and of science—happy in their growth and achievements, without money—without money, without display, without ostentation. There are today over 600,000 young Americans in these institutions. And can you tell me that a boy who is worth his salt, who is fit ever to have a client, who has the character that will enable him to assert and maintain rights, cannot find his way to one of those institutions and spend two years there? If he cannot, he does not belong in the Bar. . . .

"One concluding thing: What is all this for? What is the vital consideration underlying all the efforts of the American Bar? We are commissioned by the State to render a service. What we have been talking about was the way of ascertaining or of producing competency to render that service. Upon what standard of judgment shall we consider and attempt to do that? Of our rights? Of the

rights of the young men who come here crowding to the gates of our Bar? Is it a privilege, to be passed around, a benefit to be conferred? Is there any doubt that that standard is inadmissible? Do we not all reject it?

"The standard of public service is the standard of the Bar, if the Bar is to live; the maintenance of justice, the rendering of justice to rich and poor alike; prompt, inexpensive, efficient justice.

"Shall we turn our backs on an effort to secure better public service, and go away and congratulate ourselves on the preservation of the privilege of charging fees for services, without regard to the great duty, the great obligation, the great responsibility, that our privilege carries with it?

"The Bar of America has been fumbling for years, through the American Association and State associations and local associations and in private conference and in public address, to find some way to render the public service that we all know we are bound to render, and that we all feel we are not rendering satisfactorily; and this is the one concrete and practical step proposed for the accomplishment of that purpose.

"I hope that we shall have the enthusiastic and effective support of all the Bar associations of the country in the maintenance of that standard."

Second Session

Law as a Learned Profession

Chief Justice William H. Taft presided at the afternoon session on February 23. The keynote of his address was "The Law Is a Learned Profession." It required close, accurate, constant study to master it. Its field was wide. As life and society grew more complicated, the law itself took on that characteristic. Statutes had become numberless, precedents were myriad, and contained in thousands and tens of thousands of volumes. No man could know all these statutes, all the precedents. He could only study generally the principles and the methods available for finding the precedents applicable to the case in hand.

"This calls for a good and trained memory," he said; "great intellectual industry and facility, a power of analytical and sympathetic reasoning, and very wide general information of society and the practical affairs of men and government, adapting him to quick acquisition of knowledge, accurate and sufficiently detailed to enable him to advise those who seek his assistance, and to maintain or defend their rights in every walk, profession or business in our kaleidoscopic society.

"It goes without saying that the best preparation for the successful study and practice of such a profession is a wide and thorough general education. The best general education is to be had at our colleges and universities. There one studies literature, language, mathematics, science, history, economics, and government. There one is subject to daily, monthly, semi-yearly and yearly examinations of what he has studied. He is trained to arrange his mental machinery by special review and rapid summary of the study of a considerable period, to present it to his examiner in a comprehensive, accurate and logically digested form. He will not re-

member it all permanently but he will carry enough largely to widen his general information, and what is more important, he will by this constant practice in preparing for such a review and examination acquire a facility in the rapid acquisition and analytical digestion of any of the infinite variety of subjects he may have to be familiar with in advising a client or conducting a litigation for his rights. Such facility will often make the difference between his failure and his success. For no learned profession, therefore, is a thorough and general college education more necessary than for that of the law. . . ."

There were, of course, men who could acquire such an education and preparation without the benefit of such a training, but they were the rare exceptions. In laying down rules it was necessary to deal with the average man who wished to practice, in order that society might be served in a most important capacity by competent practitioners. The needs or ambitions of those who would become lawyers should not be permitted to govern. The safety of society and the aid to society were the prime considerations. If a man could not secure the preparation which an average lawyer should have, then he should seek some other means of livelihood. The country had all the lawyers it needed now and there was no likelihood of a dearth of them, however thorough the preparation insisted upon. He touched upon the familiar Lincoln argument against higher standards as follows:

"But I am asked, would you shut out worthy young men so poor that they can not go to college? Would you bar a man like Lincoln from the Bar because he had to fight his way from squalor, and poverty to become the great lawyer he was? No, I would not. Lincoln was a man—and so are all nascent geniuses and leaders like him—who, if it had been necessary to go to a college to prepare himself for the Bar, would have overcome another obstacle and done so. It was not necessary in his day to have the basis of a college education for admission to the Bar. He educated himself and prepared himself. He would have been better prepared, had he had a college education, but he was of a rare mould and his example furnishes no rule which should guide us today. The opportunities for college education are not confined to the great eastern endowed universities, or to the great state universities, now flourishing in every state. The whole country is dotted with collegiate institutions of learning near to the home of every young man anxious to come to the bar, with facilities for supporting himself through his college course, if he has the courage and tenacity and self-restraint to avail himself of them. There are thousands of young men doing this now. Such a man will derive more from his college course than the young man who is supported in college by his parents. He will know what it costs in effort to secure such an education. He will value it his whole life long. He will have in its acquisition a discipline of character that will enable him in the race of life to distance his apparently more fortunate classmates who get remittances from home and regard more highly the diverting pleasures of a college course.

"But I must not dwell on this phase of preparation requirements for the Bar. I would not over-emphasize the side and claims of the applicant for

the Bar. The great consideration is the usefulness to society of the Bar. As to that, there can be no doubt, that we shall greatly increase the competency of the Bar to discharge its most important function if we insist on the necessary preliminary essential of a thorough college education. In the new rules adopted by the American Bar Association, we have not made a complete college course necessary before study of the law begins, though I hope we may ultimately do so. We are moving in that direction by requiring two years of collegiate training. . . .

"There is nothing aristocratic or exclusive about our policy. When you come to employ a Doctor to attend your very sick wife or child, you don't think yourself exclusive, you don't count yourself an aristocrat because you make diligent inquiry to obtain the best Doctor you can get. When you are seeking to recover just compensation for a gross injustice done you, or are defending yourself against a dangerous and fraudulent suit against yourself for heavy damages, or are seeking to save your property from total loss at the hands of some one whom you have unwisely trusted with it, you can not be called a patrician, or a snob, or an aristocrat because you try to find a lawyer who is the ablest and best fitted man to preserve your rights at the Bar. The rules for preparation for the profession of the Bar were adopted for the purpose of making it less likely that you will hazard your important interests, important at least to you, by placing them in the hands of a man who practices law but who may not know enough to protect them as a competent lawyer would. It will not make certain that every lawyer is competent, but it will certainly reduce the number of incompetents. We make haste slowly in this world in reforms. But it is important that we shall be constantly moving in the right direction."

Justification of Two Years of College Training

The next part of the program was a paper by Prof. Samuel Williston of the Harvard Law School introducing the topic, "The Justification of Requiring Two Years of College Training in View of the Technical Education Necessary to make an Efficient Lawyer." The first reason Prof. Williston advanced for requiring this preliminary college training was that it insured some degree of maturity in the student, and the effective study of the law demanded a mind of some maturity. The childish gift of memory was by no means to be despised, but the law student who relied upon that was doomed to failure. Nor was even pure logic the only power of mind which a student of law should possess and exercise. Perhaps the highest mental faculty which a great lawyer ultimately acquired was wise judgment, based not only on memory and logical deduction, but on a wide range of comparisons and inferences too numerous and subtle for complete classification. This faculty was of slow growth, but its development should be begun and carried forward while the student was engaged in mastering a knowledge of technical law, and this development required a student of somewhat mature years.

But years were not the only requisite, otherwise this desideratum could be easily obtained by fixing an age limit for students entering upon legal studies. The years must have been spent in such a way as to fit the young man for the work which is before him. Law is a bookish profession and it is inevitable that it should become more so. Illustrations of

great lawyers of past generations who had achieved success with slender knowledge derived from books were misleading. The printed sources of Anglo-American law have been more than doubled in bulk in thirty or forty years. There are more law reports in English printed since 1885 than were printed prior to that year from the beginning of English law reporting. Moreover, the bulk of statutes is tremendous. No lawyer today can be efficient who has not some ability to use books and extract from them quickly and accurately the principles which they state. Learning brief summaries of the main topics of the law is not an adequate or sufficient technical education. He must be able to investigate original sources and learn to do this quickly and easily.

In order to illustrate fully the importance of mature years and preliminary education before work in a law school—and he was assuming that the student was to acquire his technical education in a law school—he pointed out the character of the work in such institutions at present. It was not what it was a generation ago. Students were no longer given little elementary books from which to memorize formal rules. The test of experience had shown that to get an adequate legal preparation a student must study cases—the source of most of the law. The development of the case system of study and teaching had resulted in an enormous improvement in the capacity of graduates of the best law schools. In fact, a third year law student in one of our better law schools knew more in the way of legal principle and theory on graduation than he would ever know again. Distinguished members of the profession might smile at this, but let them take a series of examination papers and look over them. He did not wish to make the statement too broad, however. After admission lawyers of course learned practice and procedure and methods of applying their legal knowledge most effectively, how the business affairs of life are conducted, and on certain topics in which they specialize they learn the law with a thoroughness of detail which of course no law student can equal. He continued:

"Besides the maturity and general intelligence in using books and language which may be expected from one who has had some college training, and which are less likely to be found when one has not had this advantage, the specific studies which are taught in college have a distinct though often indirect bearing on the work which a lawyer is called upon to do. As rules of law are merely rules governing the life of a community all knowledge relating to the life of the community is of indirect advantage to the lawyer. Rules of law should coincide with wise economic policy and one who has no conception of economic policy is not a well trained lawyer. This is more apparent in some branches of the law than in others—labor disputes, railway administration, restraint of monopolistic combinations, all involve fundamentally economic questions, and law must be brought into harmony with a wise economic solution of such questions. One who has had no college training is not likely to have an intelligent understanding of economic theory on which to base a study of the law governing such problems, and few indeed are those for whom the possibility of broad systematic study has not ended when they begin the actual practice of their profession. The

study of history also furnishes a background enabling the student in his technical studies to grasp better the idea that legal principles are an evolution, that in varying degrees they are always in flux and must be studied with reference to time, place, and circumstances, and adapted to them."

More important even than these special studies was the capacity to use the English language. While it must be sadly admitted that college students are frequently defective in these respects, at least they are better than those who have not had a college training. It might be asked whether there were any other ways and better ways to secure desired results than through an imposed rigid requirement of college training. On the whole the answer must be "no." It was not possible by examination to ascertain the student's proficiency with any degree of accuracy, and the element of time spent in studious pursuits was itself of great importance. It must be frankly admitted that there were some who were able to undertake the study of law even under present strenuous conditions and profit by it without such preliminary training. However, the question was not whether such brilliant young men can do this, but whether they would themselves not be much better for having had two years of college work. These brilliant youths were the very ones whose wings should not be clipped by permitting inadequate preparation. That their resolution to study law would be affected by a higher requirement than had prevailed in the past was extremely unlikely. Moreover, rules must be judged by their general effect. Prof. Williston concluded with tables showing the results of the work of college graduates as compared with non-college graduates in the Harvard Law School in the years 1892-1896. The examination grades of the former were uniformly considerably higher.

Ex-Governor Ralston's Address

Ex-Governor Ralston, of Indiana, followed on the same topic. All would concede that the more liberally a boy was educated before he began the study of law, the more easily he would master legal questions and become an efficient lawyer. The question presented by the paper, however, was not whether a well rounded education was a thing to be desired before beginning to study law, but that two years college training should be a prerequisite for such undertaking. Now the law school supported by private funds had the right of course to fix its own standards of admission, but he maintained that no institution supported by public funds should say to an American boy that he could not become a lawyer unless he first wrestled with a college curriculum for two years. He believed in colleges and he indorsed the wonderful work that they were doing. There was much in the paper that he heartily indorsed. He conceded that college training would mature the judgment of the student. He conceded that college experience would enable a student to make better use of legal text books and law reports and to become familiar with economic and social questions and that these would add to his equipment as a lawyer. But if one had not been fortunate enough to be schooled in college, was it right or wise to deny him admission to a law school or the bar when he showed that he was mentally equipped for such admission? There was no rule of justice that would withhold from him the right of admission

in either case. It smacked of tragedy to say to a worthy and ambitious youth that he has the ability to do the work of a law school, but that he cannot get a law school education because he has not had two years' training in college. Admission to the bar was often perfunctory and signified no particular preparation. This was wrong. A standard for admission to the bar showing a liberal preparation to practice law should be maintained by each of the states, but such a standard should be satisfied when it disclosed the requisite ability for the practice of law, without regard to how that ability was acquired. Such a standard would undoubtedly include a good elementary education, knowledge of how to find the law, ability to interpret correctly statements of legal principles and important decisions and statutes, and a knowledge of the basic principles of the common law. The ability to analyze, distinguish and apply principles was also essential. The requirements thus suggested would meet the rule of fairness exacted by sound Americanism.

Ex-Governor Hadley Speaks

Ex-Governor Hadley of Missouri, at present professor and lecturer at the law school of the University of Colorado, next spoke. He did not confine himself to the principal question raised by Prof. Williston's paper, but rather to the broader feature of the necessity of preliminary education to make an efficient lawyer in the broadest and best sense of the term. Before touching on that, he wished to emphasize what the Chief Justice had said as to the surplus of production of lawyers under our present system. The conclusion was irresistible from certain investigations which had been made that the quantity of lawyers was exceeding the demand and the quantity was increasing rapidly without reference to the quality.

Moreover, in connection with this, in the territory with which he was familiar, no presumption of learning or culture was indulged in by the general public in favor of one simply because he was a lawyer. He might go further and say that no presumption from the standpoint of moral character was indulged on the same ground. Just before he left the city of Denver he read a newspaper statement of the district attorney of that city to the effect that his experience was that the lawyers who represented the criminals were as criminally disposed as the men they were defending. Referring to his own experience of years of trying to put men in the penitentiary both through trial and appellate courts, and four years of experience in letting them out of the penitentiary as Governor, he said that in a majority of the cases in which he had actual experience perjured testimony was offered in behalf of the defendants.

The question related not only to the standing of the profession; it concerned the effect of this condition on the administration of justice, and there could be no question of the public's dissatisfaction on that score. Because the people were not discussing questions involving the administration of justice as much as they were some years ago, when dissatisfaction found expression in certain proposals, he did not believe that they were any better satisfied than they were then. And the inquisition of both the profession and the administration of justice was going to come again and the profession should be better pre-

pared to present an answer when it does arrive than it was ten years ago.

The question was what was the remedy, because the legal profession could not escape responsibility for administration of justice in the courts. In suggesting that education was the remedy he did not mean that an educated man was always a good or an able man,—and yet unless the whole theory of our government, unless the whole theory of our system of public education is wrong, the solution and the only solution of this problem was education and more education.

Effect of College Experience and Training

Mr. Silas H. Strawn of Chicago, Illinois, introduced the topic, "The Effect of College Experience and Training in Developing the Desire and Ability to Maintain and Understand High Ideals of Professional Conduct." He spoke from the viewpoint of the practicing lawyer rather than from that of one who had devoted his life to the science of education. During the thirty years he had practiced it had been his pleasure and privilege to direct the work of an average number of twenty-five lawyers born and educated in different parts of the United States, and with different degrees of education, both preliminary and legal. He disliked to detail personal experiences and he only did so to lay some sort of basis for the testimony of a witness which he was about to present. He trusted his remarks would be regarded as purely impersonal and only as the experience of an impartial observer of the subject under consideration.

A college education presupposed advantageous environment and opportunity for systematic mental discipline. Cardinal Newman had well said that "The practical business of a university is training good members of society. . . . College honor is the keenest in the community and no higher ideals can be found on earth than in the best thought of our best universities." Add to this the encouragement which colleges afford to habits of application, concentration, industry, manliness, frankness, and indeed everything that goes to make for general culture, and there could be little doubt that a college did afford an advantageous moral environment. The opportunity for better mental discipline there afforded was also an undeniable truth. However, naturally able or industrious the students mind may be, it must inevitably follow that the application of that mind in an orderly, systematic way all of the time will produce infinitely better results than will its application at will or but part of the time. He declared: "It has been my invariable experience that, given two minds of approximately equal inherent capacity, the college trained mind, when brought to bear upon the solution of any problem requiring concentration and orderly thought, will demonstrate greater efficiency than the mind without that training. It is also true that in the practice of the law the college trained mind manifests higher moral conceptions and a keener appreciation of the ideals of the profession."

He touched upon the idea that the poor must be furnished inexpensive lawyers by some less expensive means than college education as follows:

"We hear that the poor cannot afford to engage an expensive lawyer and that to supply this demand there must come to the Bar practitioners who have so small an amount invested in education that they

can afford to sell their services cheaply. I submit this is a mistaken idea of helpfulness. Can any one deny that a cheap lawyer is an expensive luxury? Is it not frequently true that the so-called cheap lawyer charges more for his services than the capable one? There are two reasons for this: (a) his experience and practice are so limited that he has no opportunity to acquire any sense of proportion as to the relative importance of the services performed by him, and (b) he has not developed the requisite moral conscience or ideal of professional conduct to overcome his inherent predatory desire to follow the advice of Mr. Means in the Hoosier School Master, 'Git a plenty while you're gittin, I says to Mirandy.'

"The deplorable truth is that the poor generally pay more for less efficient legal service, rendered by incompetent lawyers, than the well-to-do pay for similar services rendered by lawyers of recognized ability and standing at the Bar."

Opportunities for Boys of Slender Means

President James R. Angell of Yale University introduced the topic "Economic Conditions and Educational Opportunities in the United States for Students of Slender Means Desiring to Obtain a Legal Education Requiring at Least Two Years of College Training."

"It is a common saying at the present time," he said, "that no intellectually competent lad, who enjoys moderate physical health, need be debarred from a collegiate education, if he is really eager to secure it. I think this statement is wholly inside the facts, although it perhaps suggests a smoother path than often lies before the impecunious boy, particularly if he does not enjoy the gift for making friendships and in general gaining the confidence and regard of those among whom he is thrown. All of us who have had extended experience in collegiate affairs can recall occasional boys, who, coming to college literally without a cent, have managed not only to support themselves while in college but to lay up something for the future and in the course of the process have given no external indication of lack of money, have apparently had their college work disturbed in the least possible manner by their money earning, and still less have exhibited any inability to share in the ordinary social and extra-curriculum activities which constitute those characteristic features of American college life most cherished by the undergraduate. On the other hand, we have seen many a lad struggling against adversity, often at considerable cost to his health and still more often at the cost of certain of the real values of the education he is attempting to secure, sometimes being obliged very greatly to extend the period of his training, to say nothing of the sacrifice of social relationships which he has been compelled to make in the process. On the other hand, students who have to fight for an education gain certain moral and intellectual advantages whose value can hardly be overestimated."

President Angell stated that it was doubtless well recognized that collegiate conditions vary very widely at present in various parts of the country, especially as regards these matters of cost. In the older educational foundations throughout the East tuition and law school fees are relatively high. Throughout the regions where state universities

have been developed collegiate tuition for residents of the states is often nominal, and generally relatively low. Regarding scholarship and financial aids at present available, he presented some figures showing that those are wholly insufficient substantially to affect the situation. The existing scholarships in most colleges are regarded as inadequate to meet even present needs, and if there were added to the college population the thousands of law students now in schools requiring no collegiate work for entrance, the situation would be more hopeless still. There are some institutions in which men can secure two years of academic collegiate training by evening or late afternoon work, thus permitting them to use the larger part of the day for financially profitable occupation, but these institutions are not many in number and are not widely distributed.

The speaker here gave some figures on the cost of collegiate tuition for a normal amount of work per year at various institutions throughout the country. A summary of these showed that for the student who is a citizen in one of a few states where state universities are conducted with practically free tuition the two years of collegiate preparation would involve little more than living expense for this period. For students elsewhere the tuition would run from a little less than fifty dollars a year to three hundred dollars a year, depending on the institution. President Angell then gave figures showing law school fees at various institutions, ranging from no fees at all for residents in the University of Wisconsin to \$250 per year at the University of Pennsylvania and \$200 a year at Yale, Harvard, Columbia and the Catholic University. In the state universities the non-residents pay fees considerably higher than residents. Passing to the subject of living expenses he said:

"Living expenses beyond tuition are estimated by college authorities at figures which vary somewhat, but on the whole show a disposition to average about three times the cost of tuition, running above this ratio where the tuitions are less than one hundred dollars and running slightly below it where they are two hundred dollars or more. As is well understood by all persons familiar with college conditions, such estimates are inevitably arbitrary and they probably tend to be scaled considerably below the median. Taken as a whole, the variation in tuition charges is probably no greater than the variation in the actual cost of life in the several communities involved, so that, measured in dollars and cents, the institutions with higher tuition charges carry with them for the average student correspondingly higher general living charges. This is, of course, in no literal sense true for every student, for in the great cities where living expenses are generally high, a man can, if he will, live very economically. In no case do these estimates of necessary expenses run above \$1,000 a year, but the average is undoubtedly well above \$500, and many students spend much more than the higher figure."

Returning to the subject of aid to students, President Angell stated that a few institutions have gone far in recent years to develop loan fund systems. The growth of these funds is in some institutions going on very rapidly, and the system bids fair to do much to solve the problem of the

impecunious student who is willing to obligate himself in this way, for many of the funds are so conducted as to bear interest and more than maintain themselves. Every educational institution nowadays also attempts to assist the students to find means of profitable employment if they so desire. But the demands of the better professional schools are now so severe, that it is very difficult for a student to carry the work of a full time law or medical school, and still find either the time or strength to earn money. Moreover, the local opportunities for work are in many cases quite limited. President Angell then called attention to tendencies now rapidly developing which, if successful, would result in a reduction of the time now required of the average student to secure the bachelor's degree, and thought this would ultimately have some bearing on the problem.

He concluded with repeating that all colleges and universities are earnestly striving to make it possible for the man of fine character and substantial ability to secure collegiate training, no matter what his economic circumstances. But it would be fatuous to assume that they have as yet at all fully succeeded in solving this problem. The strong, earnest student can always pull through, but the task is often far from easy.

General Discussion of Topics

An interesting general discussion followed, the speakers briefly touching on points they thought needed clarifying. Dean Stone, of Columbia University, pointed out that actual experience in those law schools of the country which had adopted the two years in college as an entrance standard showed that after a reasonable time the number of students in attendance had increased. He also pointed out the representative character of the student body in the law school of the institution with which he was connected, the fact that fully one-third of these students maintain themselves fully or in part by some occupation, and the great opportunities urban universities now afford for getting a liberal education by attending night or evening classes while engaged in some gainful occupation. Mr. Hale, of Illinois, presented some statistics, recently gathered in that state as a result of a questionnaire sent out to the men and women admitted in the last two years, which indicated, in his opinion, that there was no need to fear that the young men from foreign countries and from our own land with insufficient education would cease to "force" themselves to the bar. Mr. Cohen, of New York, advanced the view that the profession could not go on with its protest against the unlawful practice of law and the unlawful practitioner without at the same time performing its duty to see that those who are really licensed are competent to do their work.

Mr. John Bell Keeble, of Tennessee, said there was not any lawyer active today who claimed any sort of position in the community that would not say that the bar could be elevated and should be elevated. But he appealed to the conference to look at the question before it from a practical standpoint:

"You have all settled it so far as the American Bar Association is concerned. Then you ask us who come from Tennessee and other states in the Union to pledge our support to go back and ask the legislature to pass a law which says that no man shall be admitted to the bar unless he has graduated

at a law school that has a three years' course and a requirement for two years in academic work, notwithstanding the fact that such a rule would disqualify every member of the Supreme Court of the United States, every member of the Supreme Court of Tennessee, and practically ninety per cent of the American Bar Association.

"Now to go before the Tennessee legislature, which is just as fair in average intelligence and ability as legislatures generally throughout the country, and urge the adoption of a statute like that would be simply folly. The State of Tennessee is not going to pass any such legislation as that, and I take it that there are many states in the United States that will not do it. . . . The trouble with this attitude is that instead of stimulating and guiding and persuading men gradually to attain the standards of the bar they should attain, you place a bar sinister upon every state that does not follow this signal. . . .

"Let the law schools that can elevate their standard elevate it just a little bit above their people all the time, just a little bit higher, but never so high that it cannot be reached in the rakk by the man of average character and capacity. I will say this that I could not honestly say that no man should be admitted to practice law in the State of Tennessee, anywhere in the State, unless he had had two years of academic work and three years of law work, because I know that in fifty per cent at least of the county seats in my state the practice does not call for any such learning or attainments, and if a man had that much education, there is not one man out of a hundred that would ever go back and live with his father and mother and practice law with the boys among whom he was reared. He would go to the city.

"Down in my country the great reason why the bar does not exercise the same influence in public affairs that it used to do is because too many of us—and I put myself in that class because I am subject to that criticism—have been retained for many years by large corporate interests, and whether we feel embarrassed to express ourselves for fear it might react on our clients, or whether we are embarrassed because we fear our sincerity might be questioned, we have lost our hold on the imagination of the public. Not because we do not know the law but because we have withdrawn ourselves from that active touch with the community which those great lights of the law of ancient days had, men who took no regular retainer from anyone but were ready as free-lances to serve any clients."

Mr. I. Maurice Wormser, of New York, favored raising the standards. The preceding speaker had spoken of the situation in Tennessee, but that did not represent the United States. We must look out for New York, Boston, Chicago, Philadelphia and communities like that. There was where the great amount of practice was carried on and the standards had to be raised quickly or the Bar was going to be discredited. Mr. Dawson of Colorado found something un-American in the proposals—though he did not think it was intentional. If the examinations for admission were searching enough and showed sufficient education, it did not matter where the applicant got that education. He warned the profession to go slowly before setting an arbitrary standard that would proscribe the field and usefulness of the American self-made man or shut the door of opportunity against that most important American insti-

tution—the poor boy with great natural endowments. Mr. J. Nelson Frierson, of South Carolina, said that it seemed to him that the argument that the rights of the individual were superior to the rights of society today was not entitled to any notice whatever. Society was entitled to protection against incompetent lawyers. Mr. Taylor, of Idaho, said he could not say what Idaho would do, but it was a young and progressive state and wanted the best in every line. We are not living in the past, we are not going back to unseat Lincoln or anybody else. We are living in the present and for the future. Mr. John B. Sanborn, of Wisconsin, speaking of bar examinations as a test, said he had been a bar examiner himself, and no bar examination had ever been devised that could not be passed by proper cramming in a very brief period. Mr. W. A. Hayes, of the same state, called attention to the new Chief Justice of the Supreme Court of Wisconsin as an illustration of the fact that a poor boy born in a foreign country could get a college education in America under conditions vastly more difficult than at present and rise to eminence in his profession. Mr. J. Zach Spearing, of Louisiana, said the discussion by those unfavorable to the resolutions appeared to overlook the fact we were dealing with present conditions and not those which existed fifty or sixty years ago.

Third Session

Influences Determining Advances in Medical Education

Hon. Hampton L. Carson presided at the meeting Thursday evening. He made a few happy remarks in opening the session and then introduced Dr. Welch, Director of the School of Hygiene and Public Health, Johns Hopkins University, who spoke on "Some of the Influences Determining Recent Advances in Medical Education."

Dr. Welch began with the statement that he was there to play the part of a consultant, on the assumption that the conference believed there were sufficient analogies between the problems of medical and legal education to raise at least a presumption that the experience of the medical profession in bringing about a very rapid and marked improvement in medical education would be helpful. There was indeed in the character and history of these two of the three learned professions enough to justify the expectation that each might get helpful suggestions from the other.

The great achievements of the last two decades in the improvement of medical education, he said, have been the extinction of most of the independent proprietary medical schools, conducted for gain, which were the great evil of American medicine and, at the same time, an equally remarkable advancement in the educational standards and facilities of most of the remaining schools. The result has been fewer schools, more numerous and better opportunities for obtaining a good medical education, a great reduction in the total number of students of medicine, followed in the last three years, however, by a decided upward trend and a marked preference for the better schools. This decrease in the number of medical

schools and students was in marked contrast with what had occurred in the legal field.

By far the greatest single agency in eliminating inferior schools and raising the general standard of legal education had been the Council of Medical Education of the American Medical Association. But certain other factors were concerned, and these possibly have a bearing on the problem of legal education. First was the advance in both the science and art of medicine, exceeding in the last half century all that has been attained before in human history, and still progressing with rapid strides. With this knowledge there have come to the physician and the sanitarian increased power to control diseases, both by prevention and cure, improved methods of diagnosis and treatment, and new lines of attack on the problems of disease and injury. Thus the demand for such improvements in education as shall train physicians to supply the community the benefits of the best there is in the medical school and knowledge has acquired an urgency and insistence never before experienced. It is the force of this appeal that has caused university and medical school educators to set their houses in order, and has also brought to their aid the gifts of many public-spirited philanthropists.

"In this connection," he continued, "I raise the question, leaving it for you to answer, whether the development of recent years in the science and art of jurisprudence, the vast growth in the bulk and complexity of substantive law and improved methods of teaching, are not calculated to create the necessity and demand for improvement in legal education comparable to that required in medicine as a result of new discoveries in advancing knowledge?"

Another important factor in raising the standard of medical education has been the example of a few superior medical schools, according to Dr. Welch. He then proceeded to point out the salient features of the work of the Council of Legal Education, previously referred to. This is an organization with executive officers who are paid and some of whom give their entire time to the work. Its first work was in securing active cooperation between the Association of American Medical Colleges and the State licensing boards. It has, not through any legal action but solely by moral pressure, sought to induce State licensing and examining boards to raise their standards for admission to the practice of medicine to a point more nearly in conformity with the demands of modern medical education and practice. That has now been brought about over a very large part of the country, and medical schools which can not meet these advanced requirements sufficiently to make their graduates eligible for admission are automatically forced out of existence. At present thirty-three of the licensing boards of the various states require that a candidate shall have graduated from a medical school that requires at least two years of college work preliminary to beginning to study medicine.

Another important feature of this work has been publicity and classification of medical schools. This publicity has been based on study, observation and inspection of the different schools, and the application of standards easily applied. He produced a pamphlet entitled "The Choice of a Medical School" to show how the Council on Medical Education proceeded. That pamphlet went to the

students in colleges. It contained the essential information which enabled the student to find whether the school which he contemplated entering met the requirements for examinations in New York, Pennsylvania or Illinois, for instance.

He did not profess himself competent to discuss the question of whether there could be a classification of the bar according to the functions of different grades, with education particularly suited to each class. But the main functional differences in the field of medicine which had some analogy to similar differences in the practice of the law were those to be found in the distinction between consultants, if you like, or specialists most numerous and varied and often requiring quite special and technical training. But the medical profession would not consider it at all desirable that there should be different standards of admission for those desiring to exercise these various functions later. In fact, great importance is attached to seeing that a good, broad, general training is the foundation for all these subsequent directions of specialization. They were very familiar with the cry that by such a procedure in medical education they were closing the door of opportunity to the poor boy. But experience shows that the requirement of two years in college has not eliminated the poor boy who has to work his way through college and medical school. The dean of the Johns-Hopkins Medical School had informed him that over one-half of the students in that school—and it requires not merely two years but a completed college education as a preliminary—were working their way through in part or in whole or had borrowed money to get their education. Money can often be borrowed for this purpose by worthy young men who possess certain qualities which make public-spirited men glad to lend them aid.

In some ways the problem of legal education was easier than that of medical education. In the first place, lawyers did not have to encounter the difficulties which medicine has in consequence of the existence of so many sects and nondescript practitioners of all sorts of dogmas and doctrines. It was hardly necessary to say that he was speaking on behalf of scientific, non-sectarian medicine, belonging to no school whatever, any more than chemistry or physics does. Again, lawyers did not have to consider to the same extent as the medical profession the credulity of the public in these matters. These various sects in medicine have always arisen and always have something in them. As Dr. Osler had once told him, "the worst thing I know about the quacks is that they cure people." In closing Dr. Welch begged to reciprocate the very kind remarks that had been made as to the intellectual and sympathetic relations existing between the two professions, and to wish the conference the greatest success in its undertaking.

Fourth Session

A Significant and Dramatic Event

Hon. William G. McAdoo, who presided at the Friday morning session, made a short address. He said it was a significant and dramatic event in this history of the profession when a conference representing the American and state and local bar asso-

ciations met to consider the vital question of admission to the bar. One naturally approaches such a question from a point of view influenced in a great measure by the course and experience of his own life. He himself had never gone to a law school. He had studied in a law office; and painstaking, unselfish and thorough as was the friend and preceptor he had therein, it was nevertheless impossible for his pupil to receive the systematic, orderly and logical education that a properly conducted law school provides. The responsibilities of the lawyer are so grave and the function he performs so vital that the value of the highest moral and ethical standards cannot be exaggerated; and these same responsibilities make it imperative that his professional education shall be thorough.

But it is not alone as a member of the bar that the lawyer is charged with great responsibilities. He is a vital factor in the success of every business enterprise, he exerts a large influence on public opinion and in the main is entrusted with political leadership in the community, the state and the nation. Referring to the standards proposed by the American Bar Association, he demanded if there could be any reasonable doubt that their success would result in the material and moral betterment of the legal profession and the nation as a whole. Having in view the facilities for education offered by the colleges and universities of the country, and the opportunities offered to industrious young men to work their way through college, there could be no doubt that the privilege of the bar would continue to be open to men from every walk of life, regardless of their financial means. You cannot, under any restricted conditions, have a situation where admission to the bar is open to every man. The very fact of any requirement at all necessarily means restrictions and limitations.

The essential thing is not that every follower of the plough, every worker in the machine shop, every man at the forge shall have an opportunity to enter the legal profession, but rather that the way shall be open from the plough, from the workshop, and from the forge to the profession of the law, so that men in those callings and similar callings and their sons may reach the goal if they have the capacity, the ambition and the willingness to make the sacrifices which proper preparation reasonably requires. The proposals being considered were not particularly new or unprecedently drastic. In proof he read out a course of study outlined more than a hundred years ago by Mr. Jefferson for the student of law, which was ample enough to satisfy the most exacting of modern requirements.

Technical Education Necessary for Lawyer

At the conclusion of his address Chairman McAdoo announced that the next topic for discussion was "The Technical Education Necessary to Enable the Lawyer to Serve the Public." This topic was introduced by Mr. James Byrne, President of the Bar Association of the City of New York. Mr. Byrne said that if we were to give a lawyer less education, to require less of him than of a doctor, than of the engineer, than of the individual in other professions, then we should be proceeding contrary to the whole theory upon which this government has proceeded as to the value of education from the very beginning. If we are to be the men by whom the laws are to be made, at any rate by whom they are to be

enforced, the responsibility of the highest education devolves more upon the law than upon any other profession in the country.

What it is necessary to think of in the way of educational requirements at present was not what extraordinary men, but good average men required. One point that had been constantly in his mind for the last forty years was not how unfair it was to someone not to let him become a lawyer in some easy way, but how terribly unfair it was to him to permit him to become a lawyer in some easy way. Why should we let a man who may have a really remarkable intelligence enter into a profession with a feeling of inferiority, thinking from the outset that there is no use of his trying to deal with great constitutional questions, that the police court is the place for him to go to practice? Why should we allow men who may be quite as competent as the great majority of men in our cities or land who are dealing with important problems of the law, to become lawyers without the proper preliminary education, simply because we did not force them into taking a chance of getting an education and seeing what could be developed from it?

He had seen it in his office, as in most of the larger offices in New York, that men had been taken from practically a very limited number of law schools; and the reason was that those men from those law schools were men that from the very beginning knew how to deal with things that are being done on a large scale. They had been doing things on the very greatest scale. He was perfectly willing to leave the details of the law course to the men who conduct those schools, in which it was often assumed that there were excellent pedagogues who knew nothing of the world. On the contrary, they were, as Judge Hughes had said, not only the guides of our youths but the instructors of their profession. There was probably not one of them who had not talked with more men who were capable of giving a correct impression of what is necessary for a man who is going into the profession than any practicing lawyer in the room.

Mr. Charles A. Boston, of New York, speaking on the same topic, said he would deal more particularly with the public interest and the public need in respect to the technical education of lawyers. It was unfortunate that there was a double significance attached to the word "technical." To the public it generally connotes a pitfall and a snare, through legal intricacies; to the lawyer it means professional equipment, the necessary knowledge of the business of the profession. In the legal profession "pettifogger" is the term applied to one who befores by petty practices supposed to be permitted and encouraged by law.

"Education in such practices is not the kind of technical education which the public needs," Mr. Boston said. "The client may wish it, but he does not need it; and the public decidedly does not need it. The public needs for its lawyers such an education as will discourage and stamp out the pettifogger. The need of the public as well as the client, is that technical education which bespeaks a knowledge of the law as it is, in order that it may be able to avoid pitfalls; that education which will promote clarity of expression; that education which will give straightforwardness of conduct; which will give breadth of vision, and a deep knowledge of prin-

ciples. It needs that education which will promote justice; which will avoid false analogies; which will speed causes to a proper and just termination; which will instil such an acquaintance with the law as will make its possessor avoid pettifogging and mountebankism. In short, it will have the practitioner know his business.

"A lawyer who knows his business dispatches it. He avoids experimentation with clients. He avoids misleading courts. He hews close to the line of principles. He leads the way to elicit truth, to preserve just principle, to enhance respect for just law, to rectify and repeal unjust law, to guide citizens to justice, and to guide lawmakers to legislate so as not to mar the structure with which they tamper and to guide the courts to proper decisions. An educated lawyer is the very best reformer. He does not cut an artery without design; nor does he leave the patient to bleed to death through his ignorance. . . ."

As to the actual public need for better technical education, Mr. Boston cited two interesting illustrations. The distinguished professor of chemistry in a certain institution, one who had had a leading part in the development of modern scientific chemistry, was warned, after he had founded his department and shaped it to his own views, that there would be no occupation for his graduates; that the world had no need for theorists; that what it wanted was practical men with some knowledge of chemistry, but that each industry wanted to educate its chemists according to its own methods; that industrial plants would not tolerate the dislocating efforts of mere theorists. As a fact, it turned out otherwise, and now he cannot turn out enough men to supply the demand. The theorist outdistanced the practical man in the first lap; for he discovered the by-product and made it pay the running expenses of the business. The next illustration was furnished by Johns-Hopkins University medical school. When it raised its standards high, they were considered prohibitive. Now the great problem is to select from the applicants the most promising, so as to keep the number within the facilities of the institution.

Failure of Law Office to Give Adequate Training

Mr. Price having been detained by the illness of his wife, Hon. George W. Wickersham presented the topic: "The Failure of the Law Office to Give Adequate Legal Training." The rapid increase in the number of law schools and students attending them was proof of that failure. The cause was doubtless to be found in the changes referred to by Mr. Root in his address at Cincinnati: the vast multiplication of text books, the immense increase in printed reports and statutes, which have made the knowledge and study and application of the law widely different from anything that existed fifty years ago. The law schools became necessary because this growth and complexity of modern law made it impossible for the successful practitioner to give the time and attention to his students necessary to fit them to enter upon the profession.

He alluded to the historic aspects of law office instruction in England and America, and cited interesting testimony as to its unsatisfactory character in the early days in this country. In his opinion, the

greatest value a student got in the old days from the law office instruction method was the inspiration of association with some great and inspiring personality. And the success of the law school today will be determined not merely by the scope of its courses or the thoroughness of its instruction, but by the character of its teachers. They must be able to inspire their students with the highest professional ideals and the most simple, unwavering principles of right living. Mere learning or cleverness will not suffice. The universities must seek men of inspiring character for their professorships, those positions in which great and far-reaching influence may be exerted upon the young men of succeeding generations.

"As I have noted," he said further on in his address, "by tradition the English bar largely was recruited from graduates of universities. What tradition effected in England, the influence of the bar must compel in this country. An increasing number of uneducated men are crowding into the legal profession in our large cities. I cannot speak from knowledge of the rural communities. But the rules of my own state, applicable to all parts of the state, permit entrance to the profession by men with ridiculously slender qualifications. The law would soon cease to be a learned profession were these standards to be maintained. No other country in the world permits men to become lawyers with such a meagre educational foundation as is fixed in the statutes and rules of the greatest commercial state of our Union. It is high time that the American Bar Association organized in defense of its best traditions and moved toward a reassertion and reestablishment of its best ideals. . . ."

Mr. Wickersham gave some impressions derived from his experience during the last seven and a half years as a member of the Committee on Character and Fitness appointed by the Appellate Division of the Supreme Court in the First Judicial District in New York. Into that city comes the stream of immigration from all parts of the world. The young men quickly get the idea that the easy way to get on in the world, to improve their social standing, is to follow the disgracefully easy path opened by the statute and rules of court in New York to enable men to become lawyers. They are not required to have any college education. The less education they have, the more they seek the law school which offers them the easiest method of qualifying for the bar. For a long time the bar examiners appointed by the court confined themselves largely to requiring the exercise of feats of memory, though this situation, he was glad to say, has been changed of late. His associates and he were convinced that in a very large percentage of cases the prospective lawyers who were continental born never got through their head any adequate conception of the meaning and spirit of the English law which underlies our system. They had come from a different environment, they were products of a totally different system of thought and training, and they had never come into a full realization of the meaning of our law historically, the history of its growth, its development and significance. It was appalling to think of some of these men getting into political life, coming ultimately to be judges and interpreting the law, and, with their imperfect ideas of our political institutions, having

an influence upon the development of our constitution and the growth of American institutions.

"This condition," he continued, "is undoubtedly worse in New York City than some other places. But I have no reason to think it is much better in rural communities. . . . Now how are we going to combat it? The law office instruction has, as has been stated in this topic, proved a failure. We must insist, at all events, upon a basis of general education adequate to our needs upon which to build, fulfilling the requirements of professional instruction, and then we must see that as far as possible the organized law schools model and adopt their course so as to give the best possible professional education to men coming to the practice of law. And I, for one, have no fear of requiring a three years' course in a law school, because these very men I speak of are the ones who will get that education. They get through now on the minimum requirement, they will always manage to secure the minimum requirement, but in the process they too will be modified and they too will be improved in the final hour."

Mr. Thomas Patterson of Pennsylvania stated that he had been asked to come to present certain views against the resolutions of the American Bar Association. He conceded it the right and duty of the court and bar to insist upon certain qualifications before a man should begin the practice of law. He denied their right to determine the means by which a man could get those qualifications, unless there was some reason so absolutely persuasive and overpowering as would necessarily lead to that result. He maintained that the man without means, without the possibility of pursuing the college course, or law school course, had the right to prepare himself for the practice of law. He found nothing in the history of the past to justify the argument that the law school had any priority over the office lawyer. He had been a member of the state board of law examiners for fifteen years. One law school within ten years had had only 1.5% of rejections, and since 1915 only 7%—a wonderful record. However, taking all the law schools together, 42% of their candidates failed on first trial as against 32% of office men. He then referred to Mr. Root's suggestion of the great moral benefit gained by college training. He suggested that this was by no means certain. There was good reason to believe that in many of the universities radicalism and socialism are very wide spread. If there were boards of examiners, let the profession trust their efficiency. If the requirements should be higher, make them higher and, in particular, make the preliminary examination include the classics. The student should also be required to register with some reputable practitioner.

The Place of the Part-time Law School

Mr. Frank H. Sommer presented a paper on "The Place of the Part Time Law School in Legal Education." He said that the whole and the part-time schools recognized equally that the law is a social institution; that it governs and bears alike upon all within the community and that the formulation and development of law are consequently of equal concern to all; that such formulation and development must not be in the interest of any special class; and that in such formulation and development the interest of the whole must certainly be kept in view. The part-time school, however, insisted that

conditions for entry into the ranks of these to whom the formulation, application, and development of the law are entrusted, should not be set at a point that, irrespective of capacity, confines admission to the well-to-do.

In view of these considerations the part-time school consciously arranges its class-room hours so as to admit of carrying concurrently the task of providing a livelihood and the systematic study of law. This course is not inconsistent with the setting and maintenance of a high standard, and is not prompted by a consideration basely commercial. Though there may be some that have sinned against the light, the record of the part-time school in general supports these statements. It has not been a laggard in the movement to bring about advanced standards for admission, by the action of courts and legislature. He confidently anticipated ready acceptance and support in principle, if not in detail, of the proposals of the association by the part-time schools. The proposed requirement of two years' study in college in no way contravened the principles on which these schools rest, and some of the part-time schools had long recognized the inevitability of this requirement. Such requirement raised the necessary barrier to the entrance of the unfit and inadequately trained, but under present day conditions presented no insurmountable obstacle to the average man of capacity without command of much of this world's goods.

The rise of the part-time college does not foreshadow the advent of an era of lowered standards of collegiate training. It marks rather the dawn of a day of recognition of the need of adjusting educational programs so as to extend the opportunity to acquire advanced education to all who may be advantaged thereby. Unqualified assent, however, could not be given by the part-time school to the proposal that every candidate for admission to the bar should give evidence of graduation from a law school which requires its students to pursue a course of three years' duration, if they devote substantially all of their working time to their studies, and a longer course, equivalent in the number of working hours, if they devote only a part of their working time to their studies. There were certain preliminary considerations of factors in the law school which were vital in this connection. These raised serious doubts whether the prevailing program of the schools classified as whole-time schools in general required for its mastery that the student of average capacity devote substantially all of his working time to his studies, during a period of three years.

However, he was convinced that a program adequate to prepare for efficient practice under the conditions of this day and the future will require that the man of average capacity devote to its mastery substantially all of his working time through three academic years. From this it followed that the prevailing program in whole-time and part-time schools alike required revision, and that the standards set in examination for admission to the bar should be radically advanced. He ventured to hope that if the conference approved the recommendations made by the American Bar Association in principle, that it would at the same time insist that no law school should be classified as maintaining the standards prescribed in the recommendations without a care-

ful investigation not merely of the published program of instruction, but of the administration of such program as well, nor without requiring a statement of the outside occupations and employments of the students and of the hours devoted to the same; that no school should be classified as not maintaining the required standard without giving the school an opportunity to be heard; that the academic year 1923 be permitted to pass before the stamp of disapproval was placed upon the work of any school, thus affording a reasonable opportunity for readjustment; finally, where the courts have control over the requirements for admission and have set them lower than the standards now recommended, that public disapproval be visited upon them as well as the law schools.

Mr. Charles M. Mason, of New Jersey, dean of the New Jersey law school, stated that the greatest difficulty they had had in that state had been with the courts. They had never been able to get them to require a candidate for the bar to be a law school or college graduate. He was eligible to take the examination for admission by spending three years in a law office. The time there spent was to a certain extent a joke. The candidate for admission to the bar was there used as a runner, for miscellaneous purposes, and largely for the reason that the salary to be paid was very small. He felt that the standard should be raised, that a high grade of American citizenship and of legal learning should be required of every candidate, and the courts should see to it that their requirements are such that a candidate must show some evidence of proficiency.

A Plan to Foster Ideals

The next topic on the program was "A Method of Bringing Law School Students in Touch with Practicing Lawyers of High Professional Ideals." William Draper Lewis, who introduced the discussion, yielded the floor temporarily for the presentation of the resolutions of the committee. Mr. Lewis' paper pointed out that formal instruction in correct professional conduct, as well as practical illustrations of the application of ethical rules, would often fall on barren soil, unless the law student was subjected to another force making for correct standards—personal contact with lawyers of high professional ideals. For good or ill our moral character is affected—in most cases profoundly and permanently affected—by the impressions made on us as boys and young men by parents, teachers and friends. There is no educational substitute for this contact in the case of law students. And all present systems of legal education fail to provide for it adequately. It is impossible to go back to the old plan of contact in a law office; the law office student today does not learn his law in the law office; he learns it in the afternoon or evening law school. The law student has not left the law office, the law office has left the law student. On the other hand, the responsibility for introducing this element of personal contact cannot be thrown entirely on the faculties of the law schools. The number of law students whom any law teacher can really know, under present conditions, is very limited. But the problem is not insoluble. He proposed this plan:

1. State or local courts or state or local bar associations, as may best suit particular condi-

tions, to appoint legal educational committees: In large centers of population, the number of the members of the committee to be about one-tenth or one-fifteenth the average number of registered law students in the territory for which the committee is appointed.

2. No person of whose moral character the committee is not reasonably assured to be allowed to register or continue to be registered as a law student, or to be given the right to take a final examination for admission to the bar.
3. All applications for registration as a law student to be made to the committee, no applicant to be registered until a report has been made to the committee concerning him by a member of the committee especially appointed to become personally acquainted with him.
4. On registration each student to be assigned to a member of the committee; a substantially equal number of students being assigned to each member. The duty of the member to whom a student is assigned being, to keep in touch with him, become acquainted with him, obtain reports concerning him from the faculty of the law school he attends, and make annually a report concerning him to the committee.
5. The committee from time to time to arrange for receptions, dinners, or other joint meetings of the members of the committee, the registered law students and such members of the bench and bar as may be invited; such meetings as far as practicable to be arranged at Christmas or other law school vacation period, so that they may be attended by the students without interference with their studies.
6. The committee to take any other steps they may deem advisable to promote a real acquaintance with and a correct professional feeling among those studying for admission.

Resolutions Presented

Judge Goodwin, on behalf of the committee, presented certain resolutions as embodying the sense of the conference. Mr. Cohen of New York pointed out that when the language of the resolutions presented was studied it would be seen that the committee had accepted nearly all of the propositions that had been advanced in opposition. He himself would find himself on the opposite side of the resolutions if there were any attempt at all to exclude the men of modest means or to exclude the son of the immigrant. It was recognized that we could not have a bar open only to men of breeding, of inheritance, or of tradition, or men coming from only one part of the world. The committee believed that the essential point was that the lawyer should have the tools of his trade, and that the tools of his trade are not merely knowledge of the law, but knowledge of those subjects which ordinarily can be secured only through university training, which make for an understanding and development of the law. The resolutions recognized the fact that there are men who do not have to go to college in order to get preliminary training. The conference was making recommendations to the bar associations of the entire country, and it was for them to determine in each instance whether the conditions in their state required these standards or anything higher or any-

thing lower; but it was intended to assist the American Bar Association in these resolutions in formulating a sound public opinion of the bar.

Ex-Senator Thomas of Colorado believed as strongly as anyone in the need of education for the well-equipped lawyer. He did not think he had ever met a really successful lawyer who was not an educated man. Sometimes, however, he had gotten that education in the school of hard knocks and the university of experience. He was not opposed to college education, but there was no more effect, no more morality, to be gained from a college education than from an education in a lawyer's office. He had long ago reached the conclusion that education and morality were not comparable terms.

Education, that is practical education, came from ability plus industry, and to some extent opportunity, although a man who wants to learn makes the opportunity himself. Three great contemporary statesmen a generation or two ago were Webster, Clay and Calhoun. Webster was a university graduate, so was Calhoun; but was Clay their inferior because he was merely a mill boy? The man whose education came by the burning of the midnight candles, by taking advantage of the few opportunities which were his in the beginning, was he their inferior? And would Clay, and the men of his calibre, have possibly reached the positions which they afterward so greatly adorned had they been required to follow some particular sort of culture or education as the foundation of their subsequent careers? He did not think so.

In his judgment the legislatures of the several states would not crystallize these resolutions into law and that was a great consolation to him. "The fixing of this particular method neither raises the ethics nor constitutes any great claim to morality nor in any other manner affects the question, except that those who desire such a course will, in all probability, find it not only desirable but profitable. I cannot reconcile my information, my contact with men, my experience with men, with the fundamental proposition that many of them who desire to join this great profession of ours cannot possibly, by reason of industrial or economic conditions, poverty or dependence of others upon them, etc., find the opportunity to do so, if these hard and fast rules are to be enacted and the door of opportunity to be closed to that extent in their faces. . . .

"Now, I could, and so could you from your experience, run over the list of hundreds and hundreds of the greatest lawyers of your sections and of your states, all of whom have come up from the ranks and who adorn the profession to which they belong, and who have reached as high a pinnacle in that profession as those who have not had all these advantages of college training. The greatest lawyer in the senate of the United States today is a self-made lawyer. . . . I am not saying this as a disparagement of the college-bred lawyer, but merely to illustrate the proposition that it is not fundamental. After all, it depends upon the man and the use which he makes of his opportunities thereafter. Something has been said about the law's delays. Is that the fault of the lawyer who is not college-bred, or is it the fault of counsel generally, plus the infernal condition of our methods of procedure throughout the country? . . ."

Fifth Session

Gathering Fruit of the Discussions

Hon. John W. Davis, of New York, presided at the closing session. He made no address, stating that he would count his duty fully done if he was able, within the limitations of the office, to help the conference to gather the fruit of its two days' discussion.

Just before he assumed the chair, however, Mr. Sanborn, secretary of the Council on Legal Education, presented some explanations as to what was being done in regard to the classification of law schools. The council appreciated that there were a great many things in the standards which may require consideration and further definition. It was now endeavoring to obtain from the law schools of the country the necessary information to guide it with respect to very many of these terms. For instance, the question of what is "devoting substantially all the working time to the subject" would have to be carefully considered. Mr. J. Newton Fiero of New York presented for the consideration of the conference a certain report of the action taken by the New York state bar association upon the initiative of a committee of nineteen appointed in 1916, upon precisely the point at issue before the conference.

Mr. John Lowell of Massachusetts desired to speak on what he regarded as an essential advance in the ethical requirements of admission to the bar. Every state required that a man should have a good moral character. Some states require no affidavit. There are only four states that require a Committee on Character. A single affidavit, it was hardly necessary to say, was a farce. He believed that all the states should have Committees on Character chosen separately and preferably by the courts, before whom the boy should orally answer questions as to his character. In addition to that, he believed that the boy should have to present to the Committee on Character a certificate from the dean or officer of his law school that he has a good character. That certificate should be worth something. This sort of information was required by the trustees of the Harvard Loan Fund when passing on the question of extending aid to boys in Harvard University. The opinion of authorities in that college was first secured; the dean was asked to write a letter showing that the man was a moral character; and after that the board made up its mind.

Another suggestion that he desired to make was that in the law schools there should be a proper teacher of the code of ethics—they have this in some already—and proper examinations on the code of ethics, so that the boys would understand these codes and take them in as a part of their being. And he would have, in addition to the certificate from the dean of the college, a certificate from the man who has taught him legal ethics. With those two certificates and with the Committee on Character making an oral examination, something could be accomplished. He thought it also would be possible to have the committees continued so that the boys in future could refer to them when they were in doubt as to what course they should pursue.

Mr. W. C. G. Hobbs of Kentucky stated that the Bar Association of Lexington, which he rep-

resented, indorsed fully and thoroughly the resolutions passed by the American Bar Association. Mr. Dee of New York referred to the requirements for two years' college preliminary preparation. Would that advance the position of the law student? He said from personal experience that there was a certain type of college graduate in the school he represented (The Fordham Law School) who is a greater evil than those who are not college graduates. What was the radical defect in the law student today? It was rebellion against authority. Destructive criticism was rife in eastern cosmopolitan colleges today. And he personally felt that the blanket requirement of two years of college preparatory work gave only a greater rebellion against authority.

Mr. Marvel of Delaware moved an amendment to the resolution that the courts and bar committees may, under the circumstances, accept the equivalent of three years' work in a standard law school. That would be using the same language that had been used regarding two years in a college. In moving the amendment he was largely moved by a keen desire that the conference do something that would practically advance the standard of the bar. He was very fearful that the resolutions of the national bar association, as modified even by the conference, were attempting to go too fast. Mr. W. H. Ellis of Florida then offered a substitute declaring that a reasonably high standard of character and literary and technical training should be required of all persons desiring to practice law; that the subject was one with which the bar in each state should deal through its own organization as an instrumentality of the state; and that the state bar associations represented in the convention pledged themselves to work for the enactment of legislation vesting in the bar of each state the power to prescribe suitable qualifications for admission.

Mr. Root's Dramatic Appeal

At this point Mr. Root stated that he had to leave in ten minutes for a train and asked indulgence to use five minutes of that time. There was loud applause and the entire assemblage arose as Mr. Root took the platform. He said:

"Ladies and gentlemen, there have been two kinds of suggestions made in opposition to the approval of the action taken by the American Bar Association. One is in recognition of the serious evil with which our bar ought to deal. . . . But the recognition of that fact distinctly made, for example, by the gentleman from Florida, who proposed the substitute a few minutes ago, is accompanied by a pious hope, a resolution wholly ineffective to cure anything, just such as we have been having for a quarter of a century before the American Bar Association finally came to a concrete conclusion, which, if adopted, will accomplish something. I think that the proposal of my friend from Delaware, Mr. Marvel, is of the same general character. It is to approve the standard but remove the standard at the same time. Now, for heaven's sake, do not let us stultify ourselves. If there is something wrong, as there certainly is, let us deal with it, and not use weasel words about it.

"Another class of objection was illustrated this forenoon by my friend, the former senator from Colorado, Mr. Thomas, for whom I have had for forty years or more, since we first met in the Su-

preme Court of the United States, not only great admiration, but warm friendship. Now my good friend was responding not to a study of this subject, but responding to the natural reaction of a man who rather dislikes to have the old traditions of his life interfered with by somebody else. (Laughter and applause.)

"I am willing to admit that if you concentrate your attention, as he did, upon Thomas and me, you do not need any cure. We are too old to be anything else. Whenever trouble comes it comes in the fact that this bar of ours is being filled up to the brim at every term of court by thousands of young men whom nobody knows anything about. (Applause.) And the question is how to get a line on them so that you can keep the fellows out that are merely trying to get an opportunity to blackmail and grind the face of the poor, merely seeking an opportunity for more successful fraud and chicanery by having a law shingle. How can you let in the good fellows, the earnest, sincere fellows, and keep out the black scoundrels of the future? I have not heard any suggestion that takes the place of saying that there shall be a period in the nature of a period of probation (applause), where two things shall happen to him, where he shall be under the observation of men whose testimony regarding his daily walk and conversation will be accepted as proving whether he is of the right stuff or not, and the other that he shall be under such conditions that he will be taking in through the pores of his skin American life and American thought and feeling. (Applause.)

"My friend Thomas did not do himself justice in the story about the banker who said, 'Damn your religion, show us your collateral.' That is not his character. That did not come from Thomas. That did not come from his heart. It came from the nature of the proposition that he was arguing and I am against it. God forbid that that shall be the principle applied to building up the American bar of the future. (Applause.) Above all the stocks and bonds that can be made into collateral stands as a guarantee of the future of our great and prosperous country the character of the men who come to be called to the bar. (Applause.) I hope sincerely that this conference of men who hold dear the good name and the prosperity and the moral qualities of the communities and states from which they come will not here vote to stop the only effort the bar has ever made to answer the prayers of the good people who want our country better, and to answer to the terrible responsibility that rests upon it to maintain the free institutions which are to perpetuate liberty and order in our dear country. (Applause.)

"All that the opposition here comes to is simply to stop, to stop! to do nothing! stop the American Bar Association, disapprove them, tell them they should do nothing! How much better, instead of beating over the prejudices and memories of a past that is gone, is it to take dear old Edward Everett Hale's maxim, 'Look forward, not back; look upward, not down, and lend a hand.' (Loud applause.)

At the conclusion of this appeal of Mr. Root, which had a distinct dramatic quality, there were insistent demands for the question. Chairman Davis thereupon put the question on the amendment and substitute that had been offered, which were both voted down. The resolutions as reported by the committee were adopted by an overwhelm-

ing vote. A resolution was adopted that the delegates and alternates from each state should nominate one person to represent that state on a committee to be known "The Advisory Committee on Legal Education" of the Conference of Bar Association Delegates. The conference then tendered thanks to the National Daughters of the American Revolution for the use of their hall and adopted a motion for a rising vote of sympathy and hope for the early and complete recovery of former President Woodrow Wilson. Mr. Hayes of Wisconsin, in making the motion, mentioned the fact that twenty-eight years ago, Mr. Wilson appeared before the section of legal education of the American Bar Association and delivered a learned and stirring appeal for the broader education of the members of the bar.

The Banquet Addresses

Delivered by President Severance, Hon. H. M. Daugherty, Hon. George Wharton Pepper and Hon. William L. Frierson

PRESIDENT SEVERANCE of the American Bar Association presided as toast-master at the banquet which closed the conference. In his address he pointed out that the dinner marked the close of an innovation in the activities of the Association. All should congratulate themselves on the success attained and on the progress which it marked toward a closer affiliation between the American Bar Association and the various state and local organizations. The closer this bond became, the more potent the Bar would be in making itself felt on the issues, great and small, with which we are confronted and in the settlement of which the Bar must inevitably take the major part.

"The American Bar Association has," he continued, "in the face of strong opposition, the sincerity of which, I am sure, none of us challenges, taken a distinct step forward in advocating advanced requirements as conditions precedent to the practice of the law. The increase in the number of colleges and universities and the institution and maintenance of law schools throughout the country have made that easy which would hardly have been possible, and certainly not feasible forty or fifty years ago. The advancement of general culture in our country has made it inevitable that if the legal profession is to continue as the leader in public thought, it must continually seek to enlarge and develop the preparation for the exercise of its great functions. In the earlier days of the Republic, and until a comparatively recent time, the standards that were set up to entitle one, by a certificate of admission to the Bar, to proceed to take upon himself the protection of the lives, the liberties and properties of his fellow men, were very low. Very often after a few months only in the office of a preceptor, and a slapdash inquiry by a Committee of the Bar which had had only a similar training, a candidate was received into the ranks of a supposedly learned profession. The shining success achieved by some men of note who lacked the advantage of the training now proposed as essential, has often been cited as proof that it is an unnecessary requirement. But we are legislating for the whole of the community, and not for the

isolated genius who can surmount all difficulties; we are legislating for a state of society and a general range of culture far different from that of a half-century ago.

"We have progressed beyond the idea, current not so many years ago, that the foundation of a liberal education is of no advantage to one who pursues a business career. In all branches of business activity today it is normally recognized that a man with college training or a technical education is superior in working capacity to one without it. Of course under such conditions the Bar cannot lag behind.

"But however well our young men and women are grounded in the classics and other branches of learning in our universities," he added, "and however diligently they pursue their studies in the law schools before coming to the Bar, they must have something more than the mere training that comes from books. They must be taught that they are not entering upon a trade, but are becoming members of a learned profession, limited in its membership to those who have shown themselves worthy, not only by education but by character. They should be taught and should understand, that in the practice of this profession they must observe its ethical standards; that there are other things in the world more important than winning a law-suit; that they are not running a department store with agencies and advertisements to drum up business. Too much emphasis cannot be placed upon this requirement. The law schools have made too little of this important matter in their curriculum. Neither the courts nor the committees of the Bar have adopted methods sufficiently drastic to maintain the tone and standard of our profession in this regard."

President Severance here cited some rather striking illustrations of a tendency to neglect such considerations, and then concluded as follows:

"One more thought: The proposal of the American Bar Association is, that before entering the law school, the prospective candidate for admission to our profession must have had at least two years college training. Having in mind the influence that will be wielded in the various communities of our country by the lawyers whose preliminary training is thus insisted upon, the duty rests upon the members of our profession to see to it that the teaching force of these universities and colleges is made up of men and women devoted to the ideals of our government, to the Constitution created by our fathers and applied with such marvellous success to the changing conditions that have arisen in the last century and a third. It is a fact that has been blinked at or ignored, that latterly, while we require an immigrant applying for citizenship to swear his devotion to our Constitution, we permit the youth of our country to have their unformed minds warped by lecturers and professors who are about as devoted to that Constitution as Lenin and Trotsky. . . .

"The times are changing, old issues are re-appearing in new form, but human nature has not been made over. The collective thought and experience of wise and brave men who have struggled for centuries for human betterment and human rights, coupled with human duties, through orderly liberty under the law, should be taught and explained in our universities and colleges. As we

require a preliminary education, and as we demand proper specialized training, let us insist that they be acquired in schools that are not only in America but American."

The Lawyer's Duty of Public Service

Attorney-General Harry M. Daugherty spoke eloquently on the American lawyer's duty of public service. He had at times been doubtful whether the American lawyer today was doing as much in the way of public service as the lawyers of an earlier day. This might be because we saw only the outstanding figures of the profession of a former time.

"When I think of the fathers who framed the Constitution," he said, "and of the splendid part of Hamilton, of Madison, of James Wilson, of Edmund Randolph, and others of that glorious group of young lawyers, who drank deep at the fountain of human liberty, and, with united minds, gave the world a new conception of a constitutional government, founded upon law and order, strong and forceful, and yet with individual liberty protected, I see before me for all time the vision and the ideal and the conception of public service that should be held up to every young lawyer. In earlier times, because the very nature and foundation of this profession made him more capable than others to do so, the lawyer embraced the privilege of seeking opportunities of informing the people of their government, instructing and educating them and impressing them with the necessity of each doing his part to sustain the stability of the government and to preserve an unshaken faith in it. To the lawyer of the past we are indebted almost entirely for this accomplishment."

Great as was the opportunity of the past, the service of the lawyer to his country today is equally imperative. In a democracy where there is practically universal suffrage, it is important that every citizen be imbued with sound and wholesome notions of government. On whom was it more fitting to call for a performance of this public service than upon the members of the American Bar? Mr. Daugherty here paid a notable tribute to the profession for the service it had rendered the Department of Justice. In almost the year that he had served as Attorney-General he had not called upon a single lawyer to render service to the government, with or without pay, who had refused to do so. In his opinion, no man could succeed as Attorney-General of the United States without both the assistance and confidence of the American lawyer. That was why he said, whenever he spoke to a body of lawyers, that he considered every reputable lawyer in the United States a part of the Department of Justice. During the past year he had had hearings, conferences, contact and dealings with probably a thousand lawyers, and he had not found one of them untrustworthy, regardless of his interest in the cause or the nature of his employment.

Upon the American Bar rested the responsibility of furnishing the judiciary. The wise selection of judges must in a great measure depend on lawyers. Politics is, and should be purely incidental. Character, reenforced by a trained intellect and learning, fortified by moral uprightness and courage, and sustained by a clear vision of the serious responsibility of the judicial office, is

a requisite that every judge should possess. He declared that the greatest ambition of the Department of Justice, as now constituted, is to be helpful in installing a judiciary which will be a credit to America and American institutions and to the profession. He was proud to call attention to the standard established in this respect in the selection by the Chief Executive of Ex-President Taft as Chief Justice. And since the American Bar must furnish, not only our judges, but the men who in future should mold public opinion in sound notions of government, it was of grave and deep concern to the Republic that the Bar should be recruited from men who had that moral and intellectual endowment that would make them able to respond to the call of their country.

"Live Up to the Resolutions!"

Hon. George Wharton Pepper made an inspiring address stressing the duty of the Bar to live up to the resolutions which had been made, and to set them to work. They were not the kind of men who were content merely to pass resolutions and then consign them to whatever fate may be in store for the contents of those elaborate devices for concealment known as office files. The profession needed the zeal which came to those who realized that they were enlisting for a great public service. He continued:

"I suppose we have all at times thought of law as the body of rules for playing the game of life. As life is the one experience which we all share and as a happy life is our common aspiration, it follows that enormous importance attaches to the rules of the game. They must be ascertained and they must be enforced. The people who are engaged in ascertaining and enforcing the rules are called lawyers. The game of life can't proceed happily unless lawyers do their work and do it well.

"From the very nature of the case every lawyer is concerned in the way that every other lawyer functions. The rules of the game of life must be ascertained and enforced to the satisfaction of the entire community or else the orderly progress of the game will be interrupted.

"Moreover the profession is necessarily a close corporation and a self-perpetuating body. Nobody can practice law unless other lawyers are willing that he shall. Anybody may practice law whom other lawyers are willing to tolerate. Therefore the business of ascertaining and enforcing the rules of the game will be conducted just as well as the Bar wants it to be conducted and no better. Clients may be vaguely dissatisfied. The public may be uneasy and suspicious. But clients and public are practically helpless in the presence of evils and abuses. All legal reforms necessarily originate with the Bar. We alone have the opportunity. Therefore ours is the responsibility. If the American Bar is a dynamic body, we are not going to live longer in the presence of a responsibility undischarged.

"The responsibility of wisely and rightly ascertaining and enforcing the rules of the game and fitting our successors to carry on our work is a public service of the first magnitude. I know of no other that outranks it. To recognize it distinctly as a public service is highly important, because by so doing we meet and dispose of the

contention that standards of fitness should be relaxed to accommodate the infirmities of worthy but untrained young men. We are too intelligent to do this in the case of pilots or railway engineers or base-ball umpires or guides for the forest or for snow-capped mountains. The young man must qualify for public service. We do not sacrifice the public interest by good-naturedly giving him a license and turning him loose. This seems obvious; but we all have heard arguments in justification of inadequate legal training which, if applied to the navy, would have made limitation of armaments long ago unnecessary—because every ship by this time would be upon the rocks.

"This conference seems to me to be epoch-making, because we, as representative American lawyers, have for the first time definitely recognized the public responsibility of the profession and we are taking measures to discharge it. We have reached down into our minds—we have brought forth our thoughts—we have placed them before us in their startling simplicity—and the process has furnished us with our educational ideal—because an ideal is nothing but an objectified idea.

"From this time onward the character and educational fitness of young lawyers are going to be a matter of vital concern to us—because nobody will discharge this public duty if we fail. The happiness of American life—the welfare of American communities—is largely in our hands. We are awake to this fact and its significance is our inspiration."

Nobility of the Legal Profession

Honorable William M. Frierson, former Solicitor General of the United States, spoke eloquently of the nobility of the profession. Space is available unfortunately for only a few extracts:

"The minister of the Gospel, obeying an imperative call to self-denying service, cherishing the good and the pure, seeking knowledge of things divine, striving to lead men and women in the ways of righteousness, making the redemption of mankind and the saving of souls his chief concern, holds the exalted office of God's Ambassador to earth. His mission, though the least attractive to unregenerate and unconsecrated man, is, in the eyes of all who believe in the immortality of the soul, the noblest of all.

"The medical profession gives to the world the physician. He is man's earliest and last earthly acquaintance, the silent repository of the most deli-

cate secrets of life and home, the medium through whom God brings to the service of man all the curative and restorative agencies with which the works of creation abound. He is a warrior, thoughtless of his own life, leading the hosts of science against hostile diseases bent on the destruction of human life, a missionary preaching the gospel of redemption from habits which destroy the body. Wearing worthily and keeping spotless the immaculate vestments of a profession whose sacred mission is to protect and prolong life and relieve suffering, and whose service to man precedes the cradle and ends with the grave, he is, in the company of earth's most exalted, among his peers.

"Even in the presence of those whose lives honor these two great professions, the lawyer, who measures up to the standards of his own profession, may walk with no sense of unworthiness and with a just pride in his calling. Like them, his business is to serve others. His capital is the confidence and respect which he is able to command. The instrument with which he works is knowledge. He is a trusted adviser and a composer of troubles in every walk of life. The seal of professional confidence makes safe in his keeping secrets which, if disclosed, would ruin reputations, wreck homes, destroy fortunes, and bring shame and humiliation. His duty exacts that measure of unselfishness which always puts the interest of his client above his own. His is the guiding hand and his the brain which direct large business enterprises in the ways of legal safety. To adequately perform his function, he must have a wide knowledge, or at least know how to quickly inform himself, of the things which affect all lines of business and human endeavor. His advice is accepted where a mistake on his part may mean disaster. Upon him is the responsibility of asserting and protecting all civil rights and defending those whose lives and liberties are in jeopardy. And, for the faithful performance of duty and discharge of responsibility, he gives to no man any bond save his membership in the legal profession. . . .

"In such a profession there is no room for fellowship with the dishonest, the unfaithful, the untrustworthy, or the unpatriotic, and no useful place for those who are ignorant or inadequately prepared. It is our duty to the public, to the government, and to our profession to guard jealously professional standards and ideals, and to see that they are kept high and clean."

Comments of the Press

Lawyers Are Law Makers

(Dallas, Tex., News)

Probably a more substantial reason for exacting collegiate training of those who seek license to practice law could be found in the circumstance that our lawmakers are mostly lawyers, and are likely to continue to be. They are a plurality in every legislative body, a majority in most of them, if not in all of them, in fact. While education is no more a guaranty of wisdom than it is of integrity, it will not be denied that it is an addition to whatever natural competence one may have to discharge that extra-professional function efficiently.

Though the adoption of the proposal of the National Conference of Bar Associations would hardly have effects so salutary as those promised by Mr. Root and other of its advocates, it is worthy of adoption. The argument that many great lawyers of the past never saw the

inside of a law school is of little account. The likelihood is they would have been even greater lawyers if they had, as it is also likely that most of them would have sought the training of law schools, if law schools had been as numerous and accessible to the ambitious then as they are now.

The Trend of Modern Thought

(Newark, N. J., News)

The trend of modern thought sets sharply toward this pre-law collegiate work. Two years of pre-medical training is now a pretty general requirement of the schools that graduate physicians. To be sure, this training is more strictly utilitarian than that proposed for future law students, for it is packed with science to lift a part of the load hitherto borne by the medical courses. More general in character, the pre-law work could, nevertheless,

be guided to a considerable degree by law school entrance requirements or bar association rules. It could be made certain that the prospective lawyer would at least have as a part of his background a knowledge of the development of American institutions, and acquire a far broader outlook than many young lawyers bring to their profession.

Lawyer's Duty to the Public
(Knoxville, Tenn., *Sentinel*)

The lawyer owes a duty to the public and to the clients he is called on to serve paramount to the duty he owes himself. More than any other class or profession the lawyer is the architect of society, and the quality of the structure cannot well measure up higher than its author or source. The social system is afflicted with a multiplicity of futile and useless or defective laws and the machinery of the courts is congested and paralyzed with a plethora of costly, oppressive and ineffective litigation that irritates the people and burdens them with unnecessary taxation. Much of this is due to the inferior quality and superabundance of the legal practitioners who look to it as a source of subsistence rather than as a profession by which they may best serve their state and their fellows. Any improvement of these conditions that may serve to alter and rectify this injurious situation should be welcomed.

An Undemocratic Movement
(Birmingham, Ala., *News*)

But there were many lawyers in that Washington gathering of American lawyers on Thursday that resented the proposal. Whether they were academic graduates or not is beside the question. That they have achieved in spite of the handicaps of fortune, as great ministers have achieved and great journalists without a thorough textbook education, is the main thing. In all probability lawyers, like God's ministers, or God's poets, or God's journalists and literary men, are born and not made.

In all probability even Mr. Elihu Root, if he were on a committee to examine Abraham Lincoln for practice at the bar, would scarcely disbar him without a twinge or two of conscience.

Such a movement as suggested would be undemocratic and unwise to a degree. It would create a certain legal caste in a country whose very Constitution opposes castes and segregated groups of all kinds whatsoever.

Any Forward Step Justified
(Columbus, O., *Journal*)

There is need for all the wisdom and powers of understanding that may be aroused and developed in college training, in the study of the law or medicine. Without the development of these powers there can be no proper understanding of the fundamentals and no wisdom in the application of the professions. Nor can there be any realization of the relation the learned profession ought to sustain to the public. Entrance in these professions has been far too easy. To continue that is to continue to lower the standard in the profession. Any forward step calculated to give men better preparation and fitness for life in the profession is justified.

For the Good of Profession and Public
(Cleveland, O., *Plaindealer*)

While the national conference of bar associations was closing its sessions at Washington with a resolution looking to the better education of lawyers, the Cleveland Foundation was making public the report of a local survey on legal education. Both resolution and report emphasize the same point; that for the good of the profession and of the public more stress should be put on the training of lawyers.

It is no defense to say that the country has had many highly esteemed, able and useful lawyers with no more preparatory training than that now given by the schools under criticism. The public asks constantly higher standards in this as in other lines of human activity. The safety of governmental institutions demands high mental as well as high ethical standards in the legal profession.

Effect of Systematic Work
(San Francisco, Cal., *Bulletin*)

The moral as well as the educational effect of five years' systematic work cannot be overestimated. It is a

guarantee to the public not only of the necessary legal qualifications, but also of some standard of character. If such requirements were adopted all over the United States it would do much to restore public respect for the ancient and honorable profession of the law.

Too many have broken into the profession through the side-door of a correspondence course better adapted to passing examinations than to imparting a sound training. There may be a royal road to the bar, but there is no royal road to adequate legal knowledge.

As we require proper training for those that have charge of the health of the people, so we should require not only proper training but a high standard of character of those that have charge of our legal business.

Should the conference at Washington adopt the proposed resolution it will have a splendid effect throughout the country, but in some States—California is one—it will have no significance until we have a self-governing State Bar Association.

College Education Stands for Nothing Definite
(Philadelphia, Pa., *Enquirer*)

No one doubts that lawyers should be the most intelligent and honest of men, since to them is so largely committed the lives and property of many of the population. If a four-year course in college would improve their mental and moral qualities, it would be most desirable, but that is begging the whole question.

Unfortunately, a college education stands at present for nothing definite. It embraces something like a thousand courses, only a few of which need be taken by the student in order to gain a diploma. Take any large graduating class and you will find as great a difference in the mental equipment acquired as you will find individuals, and there is nothing to indicate their moral standing.

Equality of Opportunity Demanded
(Memphis Commercial-Appeal)

The fundamental law of the United States is founded upon equality of opportunity, and it has always been America's proud boast that its sons might all aspire to the presidency. To be sure, few of them can reach that exalted station, in the very nature of the case; but none are barred by artificial barriers. We have come to a time, however, when an educational test is sought to be applied to nearly everything, and it may be that not far in the future no man will be regarded as eligible to succeed George Washington who has fewer than three academic degrees.

It remained for a golden-mouthed son of Tennessee, John Bell Keeble, to stand up fearlessly for the constitutional right of equality of opportunity for the youth of America in that assembly of the high lights of his profession, and in the place where his grandfather achieved national eminence as a statesman. It was not for nothing that Mr. Keeble was the grandson of John Bell, Tennessee's great statesman, on this occasion. He imbibed his devotion to constitutional ideals from a high and pure source, and it would have greatly surprised us had he failed to act up to his high descent.

Higher Standards Make for Efficiency
(Milwaukee, Wis., *Sentinel*)

Experience has shown that overcrowding of a profession is not stemmed by stricter requirements and a higher standard. Requirements have been advanced in all professions, yet one is not aware of any falling off in the popularity of college engineering, medical and legal courses. If higher standards can not keep these fields from being overcrowded, they can at least make for efficiency and a better quality of service through weeding out incompetents and barring insufficiently prepared candidates.

The Battle of the Standards
(Indianapolis, Ind., *News*)

The battle for higher standards was finally won by Elihu Root, who, in the course of an eloquent speech, said that the conference should not permit the "illustrious successes of the past" to block the purification of the American bar of the future. Mr. Root denounced present conditions which enabled "crooks and blackmailers to practice fraud under the protection of a shingle." After listening to this convincing speech, the conference, by a practically unanimous vote, agreed to the plan for a two years' college course as essential to admission to the bar.

PERMANENT COURT OF INTERNATIONAL JUSTICE

Its Organization Is an Event of Tremendous Significance and Doubtless the Greatest Advance During a Century in the Domain of International Law

By W. J. CURTIS
Of the New York City Bar

THE first Permanent Court of International Justice has come into being. The eleven judges nominated by the League of Nations have met at The Hague and completed the organization of the Court.

This simple statement of fact may fail to impress the reader with the tremendous significance of this event; and yet the organization of this Court is doubtless the greatest advance that has occurred during the last century in the domain of international law.

Only the well-trained lawyer and student of constitutional history in the United States whose information is based upon an intimate knowledge of the history of our Supreme Court, and the gradual but progressive extension of litigation between sovereign states, can appreciate this epochal event.

For many years the foundation of such a court has been one of the chief American ideals in international policy. Long before the first Hague Peace Tribunal, lovers of peace in public and private life endeavored to formulate some plan whereby international disputes and controversies should be settled without resort to the ordeal of war. These aspirations found expression in the acts of peace societies, in resolutions of committees of Congress and Legislatures of states, and in treaties of arbitration between nations. The first formal effort made by our own country to establish an international tribunal to accomplish this desirable result occurred at the first Hague Peace Conference in 1899, when our delegates, acting under the eloquent and statesmanlike instructions of Secretary Hay, endeavored to secure the establishment of such a court. As is well known, this resulted in partial success. That Conference did create what was called a "Permanent Court of Arbitration" and a panel of judges or jurors was appointed from whom selection might be made to decide upon questions submitted; but the arbitration was in no sense compulsory. The result, however, was a distinct step in advance and has proved most beneficial in its operation, for that court has been called upon through chosen arbitrators to decide upon many questions of importance voluntarily submitted by the parties in interest, and has thus contributed to the adjustment and settlement of many disputes which otherwise might have led to war between the contestants.

While this result was distinctly a long step in advance of previous practice, which simply consisted of diplomatic agreements for arbitration between nations, a further effort was made by the United States to secure the creation of an international court that should be in fact and in name more permanent both in its judicial personnel and in the manner of considering and deciding questions submitted.

In 1907, under instructions of Secretary Root, Joseph H. Choate, as the leading delegate representing the United States, devoted his great abilities and a large part of his time to the attempt to create such a court, with the result that while the plan proposed was

by resolution in principle favored, it was found to be impossible to agree upon the method of selecting the judges, which was left to further diplomatic negotiations. Mr. Choate's lectures on "The Two Hague Conferences," delivered at Princeton, give a most interesting account of the history of the efforts thus made by him and his associates, the difficulties encountered in endeavoring to accomplish the result, and the reasons for failure. In these lectures, delivered in 1912, referring to the slow progress made in the development of international law, he says:

The development of international law only proceeds step by step—very gradually. It has taken several hundred years to bring it to its present imperfect and really undeveloped condition, and it will probably take a good many more conferences, and perhaps a hundred years more before a body of international law is developed to which all nations of the earth will give their assent.

And yet, within ten years from the date of the announcement of this opinion, the Permanent Court of International Justice has come into being!

This rapid and miraculous realization of our American policy and the dream of lovers of peace throughout the world has chiefly been due to the cataclysmic influences of the war. As a result, the Covenant of the League of Nations became a part of the Treaty of the Peace of Versailles in which provision was formally made for the establishment of this court in the following language:¹

The Council shall formulate and submit to the members of the League for adoption plans for the establishment of a Permanent Court of International Justice. The Court shall be competent to hear and determine any dispute of an international character or which the parties thereto submit to it. The Court may also give an advisory opinion upon any dispute or question referred to it by the Council or by the Assembly.

Pursuant to this section of the Covenant, an advisory committee of jurists met at The Hague in June and July of 1920, and agreed upon a Statute for the Court and the method of selecting the judges acceptable to representatives of the various states, parties to the League.

On this advisory committee, the American bar was represented by its most eminent international lawyer, Elihu Root, although the United States did not officially participate. The Statute, including the method of electing judges, was submitted to the Council and the Assembly of the League of Nations at its meeting in Geneva in December, 1920, and with some amendments, adopted; and the following eleven judges selected with remarkable unanimity:

Viscount Finlay, formerly Lord High Chancellor of Great Britain, and a member of the Permanent Court of Arbitration;

André Weiss, member of the Institute of France, Professor of International Law, Jurisconsult to the

¹ Article 14 of the Covenant of the League of Nations.

Ministry of Foreign Affairs, and member of the Permanent Court of Arbitration;

Commendatore Dionisio Anzilotti, Professor of International Law at Rome and member of the Permanent Court of Arbitration;

Rafael Altamira, Senator of Spain, Professor of Legislation and Jurisprudence, and one of the original draftsmen of the Court's fundamental statute;

Ruy Barbosa, Brazilian statesman, lawyer and Professor of International Law of Havana;

Max Huber, Honorary Professor of Public Law at the University of Zurich, and jurisconsult to the Swiss Government in foreign affairs;

B. C. J. Loder, member of the Supreme Court of The Netherlands, and one of the draftsmen of the court's fundamental statute;

Didrik Galtrup Gjedde Nyholm, of Denmark, President of the Mixed Court of Cairo, Egypt, and member of the Permanent Court of Arbitration;

Yorozu Oda, Professor of International Law at the University of Kyoto, Japan;

John Bassett Moore, former Counsellor of the Department of State, Washington;

Antonio S. de Bustamante, distinguished lawyer of Havana, Cuba.

The Court thus established is open to members of the League of Nations and also to other nations under provisions to be laid down by the Council. It has general jurisdiction over all cases which the parties refer to it and all matters especially provided for in treaties and conventions in force:

The Members of the League of Nations and the States mentioned in the Annex of the Covenant, may, either when signing or ratifying the protocol to which the present Statute is adjointed, or at a later moment, declare that they recognize as compulsory *ipso facto* and without special agreement, in relation to any other Member or State accepting the same obligation, the jurisdiction of the Court in all or any of the classes of legal disputes concerning:

- (a) The interpretation of a treaty;
- (b) Any question of International Law;
- (c) The existence of any fact which, if established, would constitute a breach of an international obligation;
- (d) The nature or extent of the reparation to be made for the breach of an international obligation.

The declaration referred to above may be made unconditionally or on condition of reciprocity on the part of several or certain Members of States, or for a certain time.

In the event of a dispute as to whether the Court has jurisdiction, the matter shall be settled by the decision of the Court.²

The Court is further directed by the Statute (Art. 38) to apply:

1. International conventions, whether general or particular, establishing rules expressly recognized by the contesting States;
2. International custom, as evidence of a general practice accepted as law;
3. The general principles of law recognized by civilized nations;
4. Subject to the provisions of Article 59, judicial decisions and the teachings of the most highly qualified publicists of the various nations, as subsidiary means for the determination of rules of law.

This provision shall not prejudice the power of the Court to decide a case *ex aequo et bono*, if the parties agree thereto.

Special compulsory jurisdiction was conferred upon the Court by the Treaty of Versailles in cases

relating to Labor, Ports, Waterways, and Railways, the recent treaties about liquors in Africa, the traffic in arms and the protection of minorities.

While it will be observed that the members of the League of Nations and other nations referred to are not compelled to submit to the jurisdiction of the Court, an option was given in the protocol approving of the establishment of the Court to accept the compulsory jurisdiction referred to in the Statute of the Court. In September last the protocol accepting the Court had been signed by at least forty-two nations and actually ratified by twenty-nine, eighteen of which have agreed to compulsory jurisdiction.

The sanctions of the Court will chiefly rest upon the moral force and justice of the decisions, and also upon the powers and sanctions contained in the Covenant of the League of Nations. In this connection it is well to bear in mind that although it was originally contended that the Supreme Court of the United States could not enforce its judgments and writs as against our sovereign states, no decision rendered in such cases by our Supreme Court has ever failed of acceptance or enforcement. So it may confidently be predicted that the decisions and judgments of this great International Court will receive recognition and be accepted to the same extent as the decisions of our own Supreme Court have been in analogous cases.

Anyone with vision or imagination must, therefore, recognize the tremendous significance and importance of the establishment of the Permanent International Court as a great stride forward in the march of civilization.

The result will be received by Americans with mingled pride and regret; pride that it is the consummation of our national ideals; that the Covenant of the League of Nations which made the organization of this Court mandatory was chiefly due to the ideals and determination of President Wilson; and that the Statute of the Court and the difficult and troublesome question of the selection of the judges were in large measure influenced by a great American lawyer, Mr. Root; and finally that a distinguished American lawyer, John Bassett Moore, has been selected as one of the permanent judges of the Court, notwithstanding the absence of official recognition of the Court by his own country. Deep regret must, however, be felt that this great achievement has not yet received the official sanction and recognition of the United States. This is a humiliating confession to make, and it is therefore the duty of the members of the American Bar officially and collectively to bring to bear upon their national representatives their powerful influence to compel official recognition by the United States of the Court, that it may take its rank alongside of the progressive nations of the world. It is as true today as when written by Secretary Hay in his instructions to the American Commissioners to the first Hague Peace Conference that:

The duty of sovereign states to promote international justice by all wise and effective means is only secondary to the fundamental necessity of preserving their own existence. Next in importance to their independence is the great fact of their interdependence. Nothing can secure for human government and for the authority of law which it represents so deep a respect and so firm a loyalty as the spectacle of sovereign, independent states, whose duty it is to prescribe the rules of justice and impose penalties upon the lawless, bowing with reverence before the august supremacy of those principles of right which give to law its eternal foundation.

² Article 36, official Statute for the Permanent Court of International Justice.

AMERICAN BAR ASSOCIATION JOURNAL

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LEGAL EDUCATION

The American Bar Association displayed courage and optimism when it committed to a conference of delegates of state and local bar associations, the success or failure of its project for higher educational prerequisites for admission to the bar.

The requirement of two years of study in a college is one which, at first encounter, raises grave doubts. These doubts are not susceptible of solution without serious consideration. Two days is a short period of time in which to bring about an accord among those who differ on a subject of such importance. Substantial accord, however, was reached on the general principles involved. It was inevitable that some who had achieved professional success without such educational advantages should feel that the proposal involved an unspoken reflection on their standing. It soon became plain, however, that no imputation was intended, that there was no retrospective implication, that the measure was one arising out of new conditions, applicable to the future only, and brought forward as a measure of protection from the host of ignorant and unfit applicants, who in the great cities, under existing rules, were threatening to deprive the profession of its hitherto undisputed right to be classed as "learned."

Some there were who approached the debate with the idea that the rights of the American boy were involved and that nothing should under any circumstances be done to hinder his easy access to the bar as a means of livelihood and an opportunity for political preferment. One could see this argument melt away, when it was challenged with the declaration of the right of the public to demand safeguards against the consequences of ignorance and unfitness on the

part of those who were given the right to become a part of the judicial institution and to participate in the administration of justice. The American boy does not have to practice law and has no right to exercise the lawyer's high prerogative merely as a means of personal advantage. This right is inseparably bound up with a duty to make himself competent for effective service to his client, to the public, to the court and to the law.

Every right minded man agrees that character is the first essential of one who is to be a minister in the temple of Justice, and there were some who doubted whether higher educational requirements were necessarily related to this essential. It appeared, however, by the testimony of witnesses who spoke from personal knowledge, that the great majority of those who had been brought before the grievance committees were young men without educational training. It is very easy to see how such a young man, who must get results or go hungry and who cannot get the desired results in fair contest because of defective educational equipment, will accept employment offered by the unscrupulous and be led to disregard the ethics of the profession. Education may not convert the sinner, but it is one of the means of grace which enlightens his path lest he fall to destruction.

THE ATTORNEY GENERAL AND THE BAR

The Attorney General of the United States has on three important occasions declared his recognition of the fact that every lawyer of the United States is "a member of the Department of Justice" and has invited their cooperation on the basis of that principle. This frank and friendly overture will be met by the bar in an appreciative and sympathetic spirit.

The intimation in the after-dinner speech of the Attorney General at the banquet of the delegates of state and local bar associations, that the President was resolved to appoint to the Federal Bench men of high character and ability, and that the appointment of the Chief Justice might be considered as an earnest of his fixed intent, was most significant and provoked manifestations of enthusiastic approval.

One of the functions of the office of Attorney General, as head of the Department of Justice, and as the titular head of the bar is to advise the President as to the character and qualifications of those whose names ma

be under consideration for appointment to the Federal Bench. From the Attorney General's statement of the relation of the bar to the Department of Justice, it follows that the organized bar of the country, through their state and local associations, will most effectively cooperate with the head of the Department of Justice, by making available for his use the unbiased judgment of their professional associates as to the standing and qualifications of those concerning whom he may be seeking information.

HOW BAR MAY AID BENCH

A number of recent judicial utterances admonish the bar of ways in which it can conserve the time of the court and thus aid in the administration of justice. Associate Justice John H. Clarke of the United States Supreme Court, speaking before the alumni of New York University Law School on February 4, alluded to what he regarded as too great a disposition on the part of a certain type of lawyer to get his case into the U. S. Supreme Court. He appealed to lawyers to consider as citizens whether a particular case was of sufficient general interest to justify calling it to the attention of a body primarily organized to deal with matters of the greatest public concern. In a somewhat similar vein was the appeal of Judge R. M. Wanamaker, of the Ohio Supreme Court, to the three hundred lawyers and their friends assembled at the banquet following the recent mid-winter meeting of the State Bar Association: "Don't come to the Supreme Court just to talk. . . . Explain the point of law in question at once." And this protest against a tendency to regard the Supreme Court sessions as a sort of *conversazione* is no more pointed than the declaration of Judge Julius M. Mayer, of the United States Circuit Court of Appeals, to the alumni association of the Columbia Law School that "verbose affidavits, or other papers which drag in extraneous matters or substitute argument for a simple statement of the essential facts are undue and unfair drafts upon his [the judge's] time. They accomplish nothing; for the experienced judge readily sees through them. Inadequate or inaccurate references to the testimony and lack of reference are annoyances which add to the physical labor of the judge, from which he should have been spared; and the time spent by him in searching for or checking up the testimony, to which he might easily have been referred, might be spent much more profitably."

SOME PRESS REACTIONS

In another part of this issue, at the end of the report of the proceedings of the Conference of Bar Association Delegates, we present a number of newspaper comments showing the immediate reactions of the press to the proposal to take measures to insure a higher standard of admission to the bar. These comments are interesting and significant, for the reason that the press represents, to a very great extent, the public whose interests are so deeply involved in the discussion and solution of the problem, and whose opinion must be in the long run of extreme importance.

Those who favor higher standards of admission as a means of curing patent difficulties in the administration of justice may well be content with the tenor of these first journalistic reactions to the resolutions. A very large majority of them are plainly favorable to a movement which tends to improve conditions too well known both to the layman and to the lawyer. Some approve the proposals definitely, some manifest a tendency which should logically lead to such approval in the future, and very few indeed apparently range themselves in opposition to the plan. We regret that space is lacking to present a greater number of these quotations of press opinions, but those which are given are fairly representative of the different sections of the country, and the proportion of favorable and unfavorable comment is about the same as that which obtains in the very much larger number of clippings which were furnished us by a clipping bureau service.

As the movement for higher standards and better service progresses, doubtless a number of misapprehensions which are naturally current at the present time will be removed by a fuller discussion of this subject, so important both to the profession and the public. The important thing at this time is that it should be discussed. No one expects an instantaneous triumph of proposals which, no matter how well grounded in reason and public need, run counter to so many habits and predilections in so many quarters. The success of the movement hinges largely on an intelligent public appreciation of its object and spirit.

CONTRIBUTIONS

The board of editors wish the members of the Association to feel that the JOURNAL is a forum in which every question of broad interest to the profession in general may be discussed. Articles and letters are welcomed and those who send them may be assured that they will receive prompt and careful attention.

NEED TO ENFORCE RESPECT FOR LAW

Where Crime Has Dared the Law to Combat on Any Field the Fight Should Be Waged
Without Quarter Until the Law is Undisputed Master*

By HON. KIMBROUGH STONE
Of the United States Circuit Court of Appeals

CIVILIZATION cannot exist without law. Law is useless unless actively effective. The great agency which makes law effective in a republic is respect for the law by everyone. This respect can be compelled from such as do not willingly accord it. There now exists, in this country, the need to enforce respect for the law. My purpose in addressing you is to call attention to this need and to enlist your active service to meet this situation.

With this purpose in mind, I deem myself fortunate in having an immediate audience of this nature. Both because of your calling and of your character, you are the leading citizens of this great state. I know something of the history of your state, and my work brings me in close contact with the lawyers of thirteen of the best states in the Union. I speak advisedly in saying that Nebraska may justly be proud of her lawyers, both past and present. They have had large part in her making and have large part in her destiny for today and for the to-morrows. The people of this state rightly trust your leadership in many matters, but particularly do they rely upon you to guide them in the things we will discuss. They know you have the special training, which they lack, in law and governmental affairs. They will go where you point the way. You, of all others, know the place of law in the life of the state. You best know the tremendous importance of respect for the law. You can be most surely relied upon to instruct and lead the people to enforce respect for the law.

I am conscious that I shall say some things which are well known to you; however, I am not speaking to you alone but to a much larger audience than could be present here. Unless I can, through you, reach the great Public, which is the reservoir of power to compel respect for the law, so that Public Opinion will rise to the occasion and drown out those elements and agencies which are undermining this vital respect for the law, I shall have failed in my mission.

First, let me define the place and importance of respect for the law. Civilization exists in proportion as opportunity is given men mutually to exercise their talents and industry and to enjoy the fruits thereof. Talent and industry have little opportunity to create or acquire without protection of life, liberty and possessions. Organized order alone secures such protection. Organized order is law. Hence law is the sole structure upon and around which civilization can be builded. As the law is perfect or defective, such civilization will be healthy or otherwise. So entirely is a civilization supported by law, that, even when it has attained proportions both splendid and beautiful, it cannot long survive deterioration in its laws. No matter how brave its exterior, no matter how perfect its outlines, no matter how beautiful its ornamenta-

tion, civilization, like a wonderful building, is no stronger than the frame work upon which it is erected. That law is the one prime supporting essential to civilization is self-evident.

But the law of which I am speaking, the law which sustains civilization, is those rules which are not only supposed or intended to govern conduct, but which actually do so. Laws are enacted to control existing or apprehended conditions. Unless they are enforced they control nothing. An unenforced law is not only a vain thing, it is a dangerous thing. What was designed for a remedy becomes an active poison in the body politic. This is true, because non-enforcement can arise only from lack of will or lack of power to enforce. Either is a dangerous admission for the State. The appearance of such weakness as to one law naturally suggests and encourages the belief that it exists as to other laws—in fact, that it extends throughout the governmental fabric. There are, in all communities, human predatory beasts, who are restrained only by the bonds the law imposes. They have no civic pride or moral sense. The noble purposes and majesty of the law are quite outside their conception or concern. Their attention is entirely centered upon the strong striking arm of the law and its gripping hand. Ever ready to violate the law, they are constantly watchful of any evidence of weakness in its enforcement. Let them but suspect an unwillingness or an inability to punish and they leap through the net of laws about them, as through a web spun by a spider which has no sting. Punishment they fear. If punishment is reasonably certain and severe, they will respect the law. The place and purpose of punishment, in the law, is to prevent crime. It is vital to the existence of civilization that crime be reduced to the very minimum. Therefore, the tremendous importance to the vast majority of the people that criminals be made to respect the law, through the only sure method—certainty of its enforcement.

I have said some trite things, but conditions justify the repetition of them. There are recent happenings evincing a disrespect for law and defiance of it which urge watchfulness and action. Sometimes considerable numbers of people have been involved. In some cases, this has gone to the extent of undisguised organized defiance of the law. In other cases, the violations are individual but extensive. Let me remind you of instances of these various classes. First, of a fairly well organized instance. Your sister state of Kansas enacted the so-called Industrial Court Law. I am not now considering the policy of that law. It may be very good or very bad. The fact remains, that the legislature of that state enacted it and the highest court of that state sustained it. It is the law of Kansas. As such, it should be obeyed by all within that state. As such, it should be enforced against all and

*Address before the Nebraska State Bar Association at Omaha, Dec. 30, 1921.

violations of it punished. Alexander Howat and his followers, among the miners of Kansas, do not find this law to their liking. It is entirely within their legal rights to test its validity in the courts. But they are openly advocating, and practicing, disregard and defiance of it. This action is a direct challenge to the will and power of the State of Kansas to enforce its laws. It involves the sovereignty of the people of that state to control their own affairs through an orderly government. The state is measuring up to its responsibility and Mr. Howat is in jail. Whatever may be thought of the Industrial Court Law, every good citizen, in and out of Kansas, is proud that this great state is demonstrating its willingness and ability to control the unruly and law-defying within its borders. It may or may not be significant, that this lawless element is made up largely of foreign-born; that in this region the I. W. W. was particularly active and successful; and that, when jail bonds were presented to me to free several I. W. W. prisoners in Leavenworth, the sureties thereon were from the same locality.

An instance of semi-organized defiance of law occurred a few months ago in Wisconsin, where a settlement, also mostly foreign born, forcibly resisted the enforcement of the National prohibition law. Several men were shot before the situation quieted. I am not informed as to what has been done with these criminals but I know what should be done with them.

Right here, permit me to step aside to a subject, related to our topic and suggested by the circumstance that, in each of the above instances, a foreign-born element was involved in the trouble. All thoughtful Americans should concern themselves with the problems of immigration. There are classes of immigrants we can well do without. They confound license with liberty; they are not willing to accept our institutions; they often seek to substitute their own ideas and ideals of government, by fomenting discontent and advocating defiance of and resistance to existing law. They herd to themselves with no desire to mingle with the American mass. They come foreign and they remain foreign. Wherever you find a sore spot they are sure to be. In Kansas and Wisconsin were some of this character of immigrants. In Kansas, they wished to settle their industrial controversies in their own way — by force. When the people of that state solemnly declared such actions unlawful that had no effect upon their plans. In Wisconsin, these foreigners had been used to their wine and whiskey and could see no reason why a Constitutional Amendment and Acts of the National Congress should change their habits. They pressed and distilled and bartered in cheerful disregard of the law of the land and actively resisted when government officers interfered. There are so many instances of this disregard for law by some of our foreign elements and they are so well known, that amplification is unnecessary. This difficult element comes almost entirely from Southern and Southeastern Europe. They are so different from us in experience and ideals, that they cannot be or are not easily assimilated. This suggests the deep wisdom of the recent curtailment of immigration; and, also, arouses the inquiry whether we have not now about all the immigration we should permit from certain countries. The big foreign-owned ship lines have, apparently, violated this law to the point where the Secretary of Labor recently asked the maximum penalty against the

Cunard Line. Not being able to evade it, they are now said to be back of a movement to repeal or emasculate this law. It is very fine to regard America as the asylum for the oppressed of all lands, but it is about time we transferred some of our solicitude for the oppressed of other lands to the untainted preservation of those ideals and institutions which have protected our own people from oppression, and we need not hesitate to do so because foreign-owned ship lines may lose some money thereby.

But enough of this digression. The instances from Kansas and Wisconsin involved open defiance of the law by groups of men. Such defiance is less dangerous than another character of violation. Whenever the law is openly defied, it can be taken as certain, that the challenge will be promptly accepted. Such a slap in the face arouses immediate popular resentment, and a demand that the law be vindicated. This character of violation is an open assault. The more dangerous kind is a subterranean sapping. The most pronounced existing instance of this latter kind is the violations of the prohibition statutes. There can be little doubt that those statutes are not being effectually enforced. It is high time that they were. It is high time that the Public understands the gravity of this situation and demands and secures such enforcement. It is in no sense a question of prohibition or anti-prohibition. The policy of prohibition, whether it be good or be bad, is not involved. That policy has been and is settled and, in my judgment, will never be reversed. Prohibition was no new question in this country. It had been fought, in some form of local issue, in almost every state in the Union. The agitation had extended over years. No public issue was better understood before it was determined. To make prohibition national required a change in the fundamental law. That change was solemnly made and the Eighteenth Amendment is as much a part of the Constitution as any other provision of that wonderful instrument. There is infinitely less likelihood of the people reversing that action than there was of defeating the Amendment when it was pending. That amendment is here to stay. At any rate, it is here now. Congress has passed laws for the purpose of executing and making effective the Amendment. The Supreme Court has repeatedly upheld the Amendment and these statutes. They are an integral valid part of the fundamental and statutory law of the land. A man who violates them is a criminal. Yet, widespread violation of these laws exists. Is there an unwillingness or an inability to enforce them?

In the first place, the statutes are inadequate. Congress had a new and a difficult problem in drawing up an effective statute to initiate and enforce prohibition in a nation of more than one hundred million people scattered over a vast area; with long boundary lines, and where, for a considerable part, prohibition had not theretofore existed. It gauged this untrod field as well as it could. Experience has shown that it made one important mistake. Violations of the law were to be anticipated in large number, unless prevented by adequate punishment. The punishments prescribed were not proportioned to the incentive to violation. Therein, lay the first faulty step in the enforcement of these laws. The vital defect in the penalty clause, covering the manufacture and sale of intoxicants, was the "first offense" provision. There is no justification for that provision. It never has and

never will help anyone except the kind of bootlegger and illicit distiller who is a criminal in every sense of the word. The supposed purpose of this provision was to secure relatively light punishment to that class which, not really criminals, might overstep the limits of the law in slight degree. This purpose could, however, have been well accomplished by leaving the penalty to the discretion of the trial judge. It is not every first violation of any law which should be lightly punished. The purpose of providing a range in criminal punishment is that it may be fitted to the gradation of criminality of the particular case. The trial judge can be relied upon to make this application. He does in all other crimes, why not in this? Or, if it was feared that some judge might sentence too lightly, it would be easy enough to provide a higher minimum for second offenses without providing a lower maximum for first offenses. The purpose may have been laudable. The method of accomplishing it was lamentable. The pen stroke, designed to protect this casual class, cut further, into the vitals of the law. Where it has saved one casual offender from grief, it has provided welcome protection for a number of hardened criminals. This has been the practical working and unfortunate result of that provision of the law. Until this is changed the enforcement of the law must move with crippled gait.

But the results did not flow entirely from the lame penalties in the statutes. That fault was accentuated in some of the courts. Some judges imposed light fines without jail sentences, or only indifferent jail sentences. While I do not clearly follow such reasoning, it has been said that the idea back of these light sentences was that there was a kind of transition period from a lawful business to a lawless business, and that the offenders were not truly criminals at heart. Be this as it may, experience has thoroughly proven the utter fallacy of such reasoning. This judicial mercy has been illly placed so far as the general results are concerned. The criminals have looked upon such a policy as a character of judicial licensing, such as used to be levied, in some cities, upon houses of ill fame through the medium of periodical fines. They have gone gleefully about their business. In many instances, the fines have been so ridiculously small, that it was a lazy bootlegger indeed who could not earn his fine, by bootlegging, while out on bond awaiting trial.

There is yet another weak link in the chain of punishment. When jail sentences were imposed, the accused would, under some pretext, get committed to a jail where he would be a prisoner in name only. I know of one instance where such a prisoner, supposedly incarcerated in a jail in a small town, had his large motor car and roamed, almost at will, during the day, reporting to the jail at night, and, sometimes, going hunting at night. This sentence was merely an enforced holiday. I imagine that this instance is exceptional, but it amply illustrates the care needed to make jail sentences effective.

We may take these two statements as axiomatic in the prevention of crime: first, there must be fear of punishment; second, the fear of punishment must be greater than the incentive to violation. Here, the latter element was woefully lacking. The probable gain through violation was great. The inevitable result was a flocking of criminals into this comparatively safe and very lucrative field. Speedily there sprang up a fairly well outlined criminal business in contraband liquor.

It comprehends, in its completeness, the manufacture, wholesale and retail branches. Greater crimes were found useful, in an accessory way, to this traffic. Thefts of stored liquor, smuggling, bribery of government officials and murder of officials who dared to do their duty multiplied rapidly. The situation has become serious and the sooner it is generally known as such, the sooner will it be overcome.

We may as well understand that we are dealing with a dangerous criminal class. Just as criminal as the counterfeiter or the smuggler, but much more numerous and powerful and, therefore, much more dangerous. The nation is facing the most severe test it has ever had in the enforcement of its criminal laws. I do not hesitate to say, that the solid weight of aroused public opinion is needed. It is needed to see that Congress puts plenty of long, sharp, cutting teeth into the law, and keeps out of the law all stumbling blocks to its sure and swift enforcement. It is needed to see that judges sink those teeth mercilessly into the impudent violators of these laws until the bootleggers, smugglers, bribers and murderers will have a fearsome respect for these, as well as other National laws.

Public opinion is needed in, at least, two other directions in connection with this problem. We are told that the Prohibition Statutes cannot be enforced. It is natural that uninformed people who utter immature conclusions should say such things. Expressions from such sources carry small weight and do little or no harm. But such utterances have come from a few whose opinions usually merit attention. This is harmful. Therefore, it is worth while to actively combat all such ideas in order that they may not be accepted. They have no foundation in fact. The difficulties of enforcing these statutes at the outset were many and unusual. They sprang from imperfections in the statutes or the administration of the statutes (such as I have suggested above); from the usual imperfect functioning of an enforcing body in course of organization; from the practical conditions present when those laws went into effect. All of these elements are transitory in character. The statutes will be strengthened where experience demonstrates weakness; the courts are settling down to the determined punishment of offenders; the enforcing organization is being constantly perfected; the conditions which were most menacing at the beginning (such as large supplies of liquor) are rapidly losing force. We are now reaching the permanent period, where the main problem will be control of the supply. That is the problem of smuggling and of illicit manufacture. No one expects any criminal statute, no matter how drastic its penalties or how perfect its enforcement, to absolutely prevent commission of the crime. Murder is still committed, although the death penalty and prompt prosecution await the offender. The ultimate possible accomplishment of the criminal law is to hold crime to the irreducible minimum. The problem of smuggling is an old one. It has been well controlled in this country. Liquor will be no exception. Illicit distilling is no new problem. The circumstance that it may now be more profitable than formerly does not change its character. It has been well controlled in the past, it will be well controlled in the future. No more lucrative criminal trade can be imagined than counterfeiting money. There, money is made direct and is of such slight bulk that it is easily conveyed and concealed. Yet, so efficient is the enforcement of the statutes against counterfeiting, that it is no longer very at-

tractive to criminals and it has been reduced to a minimum. So, some liquor will be smuggled in and some will be made, but the aggregate of both will be reduced to such a small quantity that it will not be harmful and will be hardly noticed. This rest. It is possible. Therefore, it is certain. The United States has never yet failed in the enforcement of its criminal laws. With patient, tireless pursuit, which no distance could weary and no stretch of time lessen, it has followed the criminal across the seven seas and brought him back finally to punishment. It will not fail to cast its relentless net over the smuggler on its border or the "moonshiner" and bootlegger in its midst. It proves lack of knowledge of criminal history in this country and of the proven efficiency of the Government, to say these laws cannot or will not be enforced. It is puerile to say and foolish to believe. Let the public be reminded of this history and of this efficiency that they may take pride in the power of their government and that they may not take these spreaders of false doctrine as seriously as those gentlemen take themselves.

There is a last place, where active Public Opinion can be very useful, to which I wish to draw your attention. A considerable number of persons seem to regard violations of the Prohibition Statutes as "conventional" crimes. They do not violate them but they furnish the incentive for others to do so. No contraband liquor would be made or smuggled or sold unless there were buyers. The class to which I refer now are the buyers. There are too many men who think themselves respectable, yet consider it quite "smart" to buy contraband liquor. School boys, on Hallowe'en, commit petty trespasses and we smilingly excuse them as pranks of boyhood. But grown men, like St. Paul, should "put away childish things." At least, the Public should not smile upon their conniving at criminal things. Violators of proprieties, like violators of laws, are ready with defenses. These buyers of the sacred "hooch" tell us they do so to vindicate their personal liberty. The reasoning of these gentlemen is perfect. Forsooth, God gave them stomachs and connecting mouths to put things in. Bar them from pouring therein what they will and, 'tis as clear as "moonshine" in the jug, their heaven-given Liberty lies at their feet. The "lie" is there, my friends, but 'tis not Liberty that does it. This cry is so familiar that it seems an echo of another, scarcely still. How recently we heard the fierce demand for liberty of speech from those who sought to interfere with our effective conduct of the war. And yet, if we accept the reasoning of the "bootleggers," those howlers proved their case beyond a doubt; for God had given each of them a mouth wherewith to speak. Their error is the age-old one—confounding Liberty with License. How closely Liberty is bound to License when out appetites knit them together! How twin-like smile they at us from the mirror of Desire! They sometimes seem so much alike that it requires sober thought to tell one from the other. These warped and twisted views of Liberty will fool none but these gentlemen. We do not see, in them, the patriot salvaging the torch of Liberty. They do not well assume the character of Vestal Virgins to that sacred light. We know that the one thing, beyond all others, which the bootlegger and "bootleggee" dislike is light. No flame is half so modest as that under the illicit still.

Away with such sophistries! Let us look facts in the face. It is just as wrong morally to buy contra-

band liquor as it is to sell it. I am not sure but that it should be made just as criminal. I am certain that it cannot be respectable. When it leads, as it always must, to violations of the laws of the country, it is too serious to be lightly passed over. Let no man think he can be decent and worthy of respect who is a party to violations of the law of the land. He cannot be the customer of the bootlegger and escape the taint of such association. In connection with these statutes, the ability of this nation to enforce its criminal laws is being challenged now, as it has never been before. Any man who contributes to the criminal side of the contest throws his weight against his Government. He is, in no true sense, a good citizen and Public Opinion should regard him at his true value. It should place him exactly where his own acts put him. Public Opinion can make such men respect the law.

There are those who say that the situation will take care of itself. They tell us that the turbulent times, just ended, have stirred the waters of society to their lowest depths, and, as a consequence, the dregs which long had lain upon the oozy bottom, have swum upward through the confused waters to the surface; that now, when peace has come and quiet with it, those noisome things will soon sink backward whence they came, and all will be serene again. There is some truth in what they say—unhappily, not much. Such dregs have never yet sunk to the bottom of their own intrinsic weight. They are carried and held there by the purifying agency of law enforcement; as toxic floats, within the waters of a settling basin, are seized and carried down by purifying chemicals. Remove the potency of that efficient agency and they will float upon the surface in a noxious scum, poisoning the waters upon which they ride. A policy of *laissez faire* solves no such problem as is here. Such passive outlook is but on a field of clouds whereon no foot can firmly rest. This is a time for action.

I do not join that class, who batter at our ears, with cries for strict enforcement of each tiniest law in all its minute parts; and yet, I offer no apology for such as do not so enforce the law. What I desire, here, to emphasize is, that when crime has dared the law to combat upon any field, there let the fight be without quarter until Law stands undisputed master of that field. But no kind of serious contest can be won without the unseen forces. The forces which are imponderable and yet which outweigh all the rest, Society is thus like Nature, of which it is, indeed, a part. The lightening flashes, but its unseen fingers tear the rock apart. The wind roars, but its invisible hand rips up the oak and hurls it at the scurrying clouds. So, in human affairs, there is an imponderable human agency of resistless power. Take all the other factors in the game; give me the weight of aroused Public Opinion and I will mash you to a pulp. This is the force we must have behind the Law in its contest for supremacy.

In these thoughts, which I have endeavored to present to you, Gentlemen of The Nebraska State Bar Association, I have spoken plainly and directly. If I have spoken truly, the facts justify me in asking you to throw the great weight of your influence into this matter of arousing Public Opinion to the work of making all people respect the law. Respect for the law is the keystone of our social arch. When it crumbles we will be buried in the collapsing masonry.

PROBLEMS OF PROFESSIONAL ETHICS

CANON 5 of the Code of Ethics is again under fire. It reads thus:

5. *The Defense or Prosecution of Those Accused of Crime.* It is the right of the lawyer to undertake the defense of a person accused of crime, regardless of his personal opinion as to the guilt of the accused; otherwise innocent persons, victims only of suspicious circumstances, might be denied proper defense. Having undertaken such defense, the lawyer is bound by all fair and honorable means, to present every defense that the law of the land permits, to the end that no person be deprived of life or liberty, but by due process of law.

In the October, 1921, number of the "New Age," a magazine devoted to literature, science, education and freemasonry, we read:

Almost from the beginning the lawyer has been regarded as a crook. Of course this estimate of him is not true; and yet, what can we say when the Code of Professional Ethics, issued by the American Bar Association—the highest authority in such matters—lays down a rule like this:

"A lawyer may undertake with propriety the defense of a person accused of crime, *although he knows or believes him guilty*, and, having undertaken it, he is bound by all fair and honorable means to present such defense as the law of the land permits, to the end that no person may be deprived of life or liberty, but by the process of law."

The italics are ours. They mark a difference between the canon as it stands, and as quoted by the writer of the article in the "New Age." Then the article continues:

What can an honest lawyer say in defense of a man indicted for a crime which he—the lawyer—knows, or believes him to have committed. . . .

This is an age-long controversy, and may prove to be one that never can be settled.

But the profession cannot afford to allow the laymen to take a default.

It is, we submit, not only proper for a lawyer to defend a person accused of crime, although the accused, in the lawyer's opinion, is guilty; but it is often the lawyer's duty to do so.

Long ago, Doctor Samuel Johnson was asked what he thought of supporting a cause which he knew to be bad. The doctor had considered entering the legal profession, although he did not enter it. To this he replied:

Sir, you do not know it to be good or bad till the Judge determines it. . . . It is his business to judge; and you are not to be confident in your opinion that a cause is bad, but to say all you can for your client, and then hear the judge's opinion.¹

In 1840 an eminent barrister in London was retained to defend a person accused of having committed an atrocious murder. During the trial the accused, surprised and startled at certain damaging evidence against him, confessed to his lawyer that he had committed the crime; but he refused to plead guilty, and insisted that his lawyer should proceed with the defense. The lawyer, acting upon the advice of Baron Parke, later expressly approved by Chief Justice Tindal and Lord Denman, and apparently confirmed by two Lord Chancellors, Lyndhurst and Brougham, continued to defend his client, but abstained from giving any personal opinion in the case.

Upon this record the lay as well as the professional public in England agreed, we are told, in thinking that

1. *I Boswell's Life of Johnson.* Vol. I, p. 342. 2nd Fitzgerald Edition.

the lawyer would not have been justified in withdrawing from the case. As Baron Parke put it, his business was to use "all fair arguments arising on the evidence."²

There is no question, we believe, in the mind of a practicing lawyer, as to the propriety, and sometimes the necessity, of defending a man whom the lawyer believes to be guilty of the crime wherewith he stands charged. But there are still laymen, at least on this side of the Atlantic, who think otherwise.

An instance, insignificant in itself, but illustrative of the position of a lawyer may be of help here. A lawyer is, of course, an officer of the court. The writer while sitting in court waiting for another case, was required by the court, as its officer, to defend a youth who had been apprehended with a large quantity of lead pipe in his possession. He was not a dealer in such articles; and the circumstances, as related by the accused himself, were such as to indicate that he was clearly guilty of the crime charged: namely, larceny of lead pipe. "Counsel thus named by the court cannot decline the office." (Sharwood, p. 91.) The writer believed the accused to be guilty, and advised him to plead guilty. This he refused to do; and was, of course, convicted—although the writer cross-examined the witnesses for the prosecution, and so far as he was able, insisted on legal evidence.

But it turned out that the accused was below the age at which he could be sent to the penitentiary, and must be sent to a reform school. And this fact was presented to the court, and he thus avoided a term in the penitentiary. Presumably, as he looked several years older than he was, he would, if undefended, have gone to the penitentiary, instead of to the reformatory.

Thus, even if a man is guilty, and his lawyer believes him to be guilty as charged, there may be, and usually are, facts, or extenuating circumstances, which should be drawn to the attention of the judge or jury and urged for what they may be worth in cutting down a sentence or rendering the crime less infamous.

A criminal, even if he confesses the crime to his lawyer, is entitled to the services of that lawyer, who should (1) Advise as to pleading guilty or not guilty to the crime if well charged; (2) insist that, if the plea be "not guilty," there shall be no conviction unless on legal evidence; (3) prove and urge any extenuating circumstances which may exist; (4) see that whatever legal rights, e. g., as to place of confinement, character and length of sentence, etc., the accused has, shall be respected.

The lawyer's belief about the question of guilt or innocence cannot be considered as controlling; otherwise, no guilty person could ever have the services of a lawyer, unless he lies to the lawyer, or withholds from him the facts.

RUSSELL WHITMAN.

2. Sharwood's Prof. Ethics, pp. 104, 105 and appendix.

The Criminals Will Probably Have Gas Masks

"The Madrid police, in addition to their sword and revolver, will shortly be armed with a pistol of large calibre firing a bullet which bursts and discharges a cloud of vapor. This vapor produces insensibility in any one who breathes it, lasting about a quarter of an hour—really *un mauvais quart d'heure*. The pistol comes from Germany."—Exchange.

REVIEW OF RECENT SUPREME COURT DECISIONS

Jurisdiction of Admiralty Courts Over Action in Personam for Damages Arising from Tort—
Effect of State Statute Providing for Workmen's Compensation as Exclusive Remedy
on Admiralty Proceeding—Immunity of United States from Suits—Interpreta-
tion of Statute Unconstitutional in Part—Maintaining Resale Prices

By EDGAR BRONSON TOLMAN

Admiralty.—Action for Death

Western Fuel Co. v. Garcia, Adm'r., Adv. Ops., p. 97.

The district court for the northern district of California awarded damages in an admiralty suit in personam, for a death by wrongful act. When that case came by appeal to the Circuit Court of Appeals, ninth circuit, certain questions were certified to the Supreme Court of the United States, whereupon that court directed that the cause be sent up for determination as if upon appeal, and upon a review of the entire record the judgment of the district court was reversed with instructions to dismiss the libel. The case was argued March 18, 1921, restored to the docket for reargument March 21, reargued October 7 and 10, 1921, and on Dec. 5, 1921 the judgment of the district court was reversed.

Plaintiff's intestate was instantly killed while employed as a stevedore in the hold of a vessel chartered by the Fuel Company, then anchored in San Francisco bay and discharging her cargo. The Industrial Accident Commission of California under the Workmen's Compensation Act of that state, granted an award to the widow and children which the State Supreme Court annulled a year and a day subsequent to the death.

Fifteen days later the widow and children filed a libel suit in personam against the Fuel Company alleging that the injury was caused by coal negligently allowed to fall from a steel hoisting bucket. Soon thereafter the administrator was substituted and filed an amended libel with like allegations on which the trial was had. The Fuel Company denied liability and relied upon a provision of the state law which requires such an action to be brought within one year.

Mr. Justice McReynolds delivered the opinion of the court; and on the main question the learned Justice said:

It is established doctrine that no suit to recover damages for the death of a human being, caused by negligence, may be maintained in the admiralty courts of the United States under the general maritime law. At the common law no civil action lies for an injury resulting from death. The maritime law, as generally accepted by maritime nations, leaves the matter untouched, and in practice each of them has applied the same rule for the sea which it maintains on land. (Citing cases.) . . .

How far this rule of non-liability, adopted and enforced by our admiralty courts in the absence of an applicable statute, may be modified, changed, or supplemented by state legislation, has been the subject of consideration here, but no complete solution of the question has been announced.

After a review of many cases the conclusion of the court was stated as follows:

As the logical result of prior decisions we think it follows that where death upon such waters follows from a maritime tort committed on navigable waters within a state whose statutes give a right of action on

account of death by wrongful act, the admiralty courts will entertain a libel in personam for the damages.

Admiralty.—(b) Federal Jurisdiction, Tort, Contract, Workmen's Compensation

Grant Smith-Porter Ship Co. v. Rhode. Adv. Ops., p. 172.

This case reaffirms the doctrine of *Western Fuel Co. v. Garcia* (*supra*) that a Federal Court of Admiralty has jurisdiction over an action in personam for damages arising from tort, where the injury was suffered by one employed on a ship in process of construction on navigable waters within a state.

The new point decided is that a state statute providing for workmen's compensation as an exclusive remedy bars recovery of damages in Admiralty.

The case also illustrates a very appropriate use of the provision of the Judicial code concerning the certification of questions of law to the Supreme Court by the Circuit Court of Appeals.

Rohde, a ship carpenter, was injured while at work on a partially completed vessel lying at dock in the Willamette River in the State of Oregon. In the U. S. District Court of Oregon he brought a proceeding in Admiralty, alleging negligence, and he recovered a judgment against the ship company for \$10,000. The company appealed to the Circuit Court of Appeals, ninth circuit. That court certified the facts to the Supreme Court and propounded two questions: first, as to whether Admiralty jurisdiction extended to such torts, and second, whether recovery was barred by the state workmen's compensation act. Both questions were answered in the affirmative.

Mr. Justice McReynolds delivered the opinion of the court and said:

The contract for constructing "The Ahala" was nonmaritime, and although the incompletely structure upon which the accident occurred was lying in navigable waters, neither Rohde's general employment, nor his activities at the time, had any direct relation to navigation or commerce. The injury was suffered within a state whose positive enactment prescribed an exclusive remedy therefor. And as both parties had accepted and proceeded under the statute by making payments to the industrial accident fund, it cannot properly be said that they consciously contracted with each other in contemplation of the general system of maritime law. . . . The general doctrine that, in contract matters, admiralty jurisdiction depends upon the nature of the transaction, and in tort matters upon the locality, has been so frequently asserted by this court that it must now be treated as settled. . . . The Workmen's Compensation Law of Oregon declares that when a workman subject to its terms is accidentally injured in the course of his employment, he "shall be entitled to receive from the industrial accident fund hereby created the sum or sums hereinafter specified, and the right to receive such sum or sums shall be in lieu of all claims against his employer on account of such injury or death. . . ." Here the parties contracted with reference to the state statute; their

rights and liabilities had no direct relation to navigation, and the application of the local law cannot materially affect any rules of the sea whose uniformity is essential.

In order to avoid any uncertainty in regard to the meaning of the questions propounded, the learned Justice restated them and answered them as thus restated:

Construing the first question as meaning to inquire whether the general admiralty jurisdiction extends to a proceeding to recover damages resulting from a tort committed on a vessel in process of construction when lying on navigable waters within a state, we answer yes.

Assuming that the second question presents the inquiry whether, in the circumstances stated, the exclusive features of the Oregon Workmen's Compensation Act would apply and abrogate the right to recover damages in an admiralty court which otherwise would exist, we also answer, yes.

The case was argued by Mr. Charles A. Hart for the ship company and by Mr. Harry A. Hegarty for Rohde.

Admiralty.—(c) Immunity of United States from Suit—Maritime Tort

United States v. Thompson. Adv. Ops., p. 185.

Petitions for prohibition to prevent district courts of the United States from taking jurisdiction of proceedings in rem in admiralty for collisions that occurred while the vessels were employed by the United States in war-time service. Rule for writs of prohibition made absolute.

At the time of the collisions for which these actions were brought, the United States owned, absolutely or pro hac vice, the ships in question. After the collisions, two of the ships were returned to their private owners and one assigned to the U. S. Shipping Board. After the redelivery of the ships, libels were filed against the vessels for the damages ensuing from the collisions. The United States intervened and moved for the dismissal of the suits. These motions were denied by the district courts and petitions for writs of prohibition were filed in the Supreme Court.

Mr. Justice Holmes delivered the opinion of the court. On the ground that the United States had not consented to be sued in such cases and that its sovereign attribute of immunity was therefore unimpaired, the learned Justice stated that the only question really open to debate was whether a liability attached to the ships, which although dormant while the United States was in possession, became enforceable as soon as the vessels came into hands that could be sued. On this point, the learned Justice said:

But it is said that the decisions have recognized that an obligation is created in the case before us. Legal obligations that exist but cannot be enforced are ghosts that are seen in the law, but that are elusive to the grasp. The leading authority relied upon is *The Siren*. (7 Wall. 152.) The ground of that decision was that when the United States came into court to enforce a claim it would be assumed to submit to just claims of third persons in respect of the same subject-matter. (7 Wall. 154; *Carr v. U. S.*, 98 U. S. 433, 438.) In reaching its result the court spoke of such claims as unenforceable liens, but that was little more than a mode of expressing the consent of the sovereign power to see full justice done in such circumstances. It would have been just as effective and more accurate to speak of the claims as ethical only, but recognized in the interest of justice when the sovereign came into court.

Mr. Justice McKenna delivered a dissenting opinion and with him concurred Mr. Justice Day and Mr. Justice Clark. The learned Justice said:

The question in the cases is without complexity, and the means of its solution ready at hand. The

question is, what is the law applicable to colliding vessels, and what remedy is to be applied to the offending one, if there be an offending one? The question, I venture to say, has unequivocal answer in a number of decisions of this court if they be taken at their word. And why should they not be? That they have masqueraded in a double sense cannot be assumed; that they have successively justified implications adverse to their meaning would be a matter of wonder. . . . The court has kept steadily in mind that the admiralty jurisprudence of the country, as adopted by the Constitution, has a distinctive individuality, and this court has felt the necessity of keeping its principles in definite integrity, and the remedies intact by which its principles can alone be realized. The most prominent and efficient of its remedies is that which subjects its instrumentalities, its ships particularly, to judgment. Personality is assigned to them, and they are considered in pledge to indemnify any damage inflicted through them. They are made offenders and have the responsibility of offenders, and the remedy is suited to the purpose.

Many cases were cited and reviewed, particularly that of "The Siren," of which the learned Justice said:

The *Siren*, while in charge of a prize master and crew, having been taken in prize by the United States, ran into in the port of New York and sank the sloop *Harper*. The collision was regarded by the court as the fault of *The Siren*. She was condemned as prize and sold, and the proceeds deposited with the assistant treasurer of the United States. The owners of the *Harper* asserted a claim upon her and her proceeds for the damages sustained by the collision. The district court rejected the claim. Its action was reversed by this court. . . . The distinction was clearly made between exemption of the United States, the offense of the vessel, and the existence of a claim against it in consequence of its offense. And the distinction was emphasized in the dissent of Mr. Justice Nelson. He was at pains to distinguish between liability to suit and legal liability for the act of injury, the ground of suit. . . . The inevitable deduction is that, in such situation, the enforcement of a claim is suspended only, and when the vessel passes from the hands of the government, as the offending vessels have in the cases at bar, they and "all claims and equities in regard to" them may be enforced. . . . Therefore we cannot refrain from saying that it is strange that notwithstanding the language of *The Siren*, its understanding and acceptance in many cases in this court, the enforcement of its doctrine at circuit and district, it should now be declared erroneous. The cases at bar would seem to be cases for the application of the maxim of *stare decisis*, which ought to have force enough to resist a change based on finesse of reasoning, or attracted by the possible accomplishment of a theoretical correctness.

The cases were argued by Solicitor General Beck for the United States and by Messrs. T. Catesby Jones, Edward E. Blodgett and Charles S. Haight for the several respondents.

Sherman Act.—Monopoly, Maintaining Resale Prices

Federal Trade Commission v. Beech-Nut Packing Co. Adv. Ops., p. 178.

Certiorari to U. S. Circuit Court of Appeals, second circuit, to review a judgment which set aside an order of the Federal Trade Commission regarding discontinuance of a plan for the maintenance of resale prices. Reversed and remanded.

This case is of special interest because of its interpretation of the leading cases on the right to control resale prices. The doctrine of the *Colgate* case, that one has the right to refuse to sell goods to persons who will not resell them at stated prices, is reaffirmed and the limitations of that right, announced in the *Cudahy* Packing Co. case (reviewed in these columns July,

1921, p. 351) and the cases therein cited, are again strictly drawn.

The findings of the Federal Trade Commission were based on an agreed statement of fact and are far too voluminous for quotation. The points at issue are clearly deducible from the order of the Commission, which condemned the "Beech-Nut policy" as an unfair method of competition and ordered the company to desist from:

1. Refusing to sell to any such distributors because of their failure to adhere to any such system of resale prices;
2. Refusing to sell to any such distributors because of their having resold respondent's said products to other distributors who have failed to adhere to any such system of resale prices;
3. Securing or seeking to secure the cooperation of its distributors in maintaining or enforcing any such system of resale prices;
4. Carrying out or causing others to carry out a resale price maintenance policy by any other means.

The prevailing opinion was delivered by Mr. Justice Day, who, after reviewing the findings of the commission, stated the position of the Court of Appeals as follows:

The circuit court of appeals was of opinion that the only difference between the price-fixing policy condemned as unlawful in *Dr. Miles Medical Co. v. John D. Park & Sons Co.* (220 U. S. 373), and the price-fixing plan embodied in the Beech-Nut Policy, was that, in the former case, there was an agreement in writing, while in this case the success or failure of the plan depended upon a tacit understanding with purchasers and prospective purchasers. While it expressed its difficulty in seeing any difference between a written agreement and a tacit understanding in their effect upon the restraint of trade, it, nevertheless, regarded the case as governed by the decision of this court in *United States v. Colgate & Co.* (250 U. S. 300), and, accordingly held that the commission had exceeded its power in making the order appealed from.

In regard to the Colgate case the learned Justice said that the indictment in the case, as construed by the District Court, charged no act other than

the exercise of the right of the trader or manufacturer, engaged in private business, to exercise his own discretion as to those with whom he would deal, and to announce the circumstances under which he would refuse to sell, and that, thus interpreted, no act was charged in the indictment which amounted to a violation of the Sherman Act.

The learned Justice also cited from what had been said in the Schrader case, regarding the Colgate case:

Under the interpretation adopted by the trial court and necessarily accepted by us, the indictment failed to charge that Colgate & Company made agreements, either express or implied, which undertook to obligate vendees to observe specified resale prices; and it was treated "as alleging only recognition of the manufacturer's undoubted right to specify resale prices and refuse to deal with anyone who failed to maintain the same."

Reference was also made to what was said in the Cudahy case about the Colgate and Schrader cases, and the general rule was laid down as follows:

By these decisions it is settled that, in prosecutions under the Sherman Act, a trader is not guilty of violating its terms who simply refuses to sell to others, and he may withhold his goods from those who will not sell them at the prices which he fixes for their resale. He may not, consistently with the act, go beyond the exercise of this right, and by contracts or combinations, express or implied, unduly hinder or obstruct the free and natural flow of commerce in the channels of interstate trade.

The learned Justice showed full appreciation of the fact that all the cases thus far discussed involved the Sherman Act, while the case under consideration

was begun under the Federal Trade Commission Act, which declares unlawful "unfair methods of competition" and gives the Commission authority, after hearing, to compel the discontinuance of such methods. The manner in which he ties together the prevention of competition and unfair methods of competition is interesting because of what was said on that subject by the dissenting justices. We find in the prevailing opinion no other bridge across that gap except the following quotation from the Gratz case:

The words "unfair methods of competition" are not defined by the statute, and their exact meaning is in dispute. It is for the courts, not the commission, ultimately to determine, as a matter of law, what they include. They are clearly inapplicable to practices never heretofore regarded as opposed to good morals because characterized by deception, bad faith, fraud, or oppression, or as against public policy because of their dangerous tendency unduly to hinder competition or create monopoly. The act was certainly not intended to fetter free and fair competition as commonly understood and practiced by honorable opponents in trade.

A study of the Gratz case, and particularly of the statement of facts, is essential to an intelligent understanding of the latter half of the above quotation. It must here suffice to say that the learned Justice deduces from this and other cases, and from the broad and elastic terms of the act, authority to declare action which tends to stifle competition as an unfair method of competition. Here is the real point of difference between the majority and the minority of the court. The following excerpts must suffice to show the conclusions of the majority of the processes by which they were reached:

If the "Beech-Nut System of Merchandising" is against public policy because of its "dangerous tendency unduly to hinder competition or to create monopoly," it was within the power of the commission to make an order forbidding its continuation. We have already seen to what extent the declaration of public policy, contained in the Sherman Act, permits a trader to go. The facts found show that the Beech-nut system goes far beyond the simple refusal to sell goods to persons who will not sell at stated prices, which, in the Colgate case, was held to be within the legal right of the producer.

The system here disclosed necessarily constitutes a scheme which restrains the natural flow of commerce and the freedom of competition in the channels of interstate trade which it has been the purpose of all the anti-trust acts to maintain. In its practical operation it necessarily constrains the trader, if he would have the products of the Beech-Nut Company, to maintain the prices "suggested" by it. If he fails so to do, he is subject to be reported to the company, either by special agents or by dealers whose aid is enlisted in maintaining the system and the prices fixed by it.

From this course of conduct a court may infer, indeed, cannot escape the conclusion, that competition among retail distributors is practically suppressed, for all who would deal in the company's products are constrained to sell at the suggested prices.

The specific facts found show suppression of the freedom of competition by method in which the company secures the cooperation of its distributors and customers, which are quite as effectual as agreements, express or implied, intended to accomplish the same purpose. By these methods the company, although selling its products at prices satisfactory to it, is enabled to prevent competition in their subsequent disposition by preventing all who do not sell at resale prices fixed by it from obtaining its goods.

Under the facts established we have no doubt of the authority and power of the commission to order a discontinuance of practices in trading such as are embodied in the system of the Beech-Nut Company.

The careful student of this new branch of the law should not fail to compare the differences between the

order of the commission, which has been set forth in detail above for the purposes of this comparison, and the modification of that order set forth in the following quotation:

We are, however, of opinion that the order of the commission is too broad. The order should have required the company to cease and desist from carrying into effect its so-called Beech-Nut Policy by co-operative methods in which the respondent and its distributors, customers and agents undertake to prevent others from obtaining the company's products at less than the prices designated by it—(1) by the practice of reporting the names of dealers who do not observe such resale prices; (2) by causing dealers to be enrolled upon lists of undesirable purchasers who are not to be supplied with the products of the company unless and until they have given satisfactory assurances of their purpose to maintain such designated prices in the future; (3) by employing salesmen or agents to assist in such plan by reporting dealers who do not observe such resale prices, and giving orders of purchase only to such jobbers and wholesalers as sell at the suggested prices; (4) by utilizing numbers and symbols marked upon cases containing their products with a view to ascertaining the names of dealers who sell the company's products at less than the suggested prices; or (5) by utilizing any other equivalent co-operative means of accomplishing the maintenance of prices fixed by the company.

Mr. Justice Holmes delivered a dissenting opinion, in which Mr. Justice McKenna and Mr. Justice Brandeis concurred. Two quotations from this opinion disclose clearly the points of departure. The learned Justice said:

There are obvious limits of propriety to the persistent expression of opinions that do not command the agreement of the court. But as this case presents a somewhat new field—the determination of what is unfair competition within the meaning of the Federal Trade Commission Act—I venture a few words to explain my dissent. I will not recur to fundamental questions. The ground on which the respondent is held guilty is that its conduct has a dangerous tendency unduly to hinder competition or to create monopoly. It is enough to say that this I cannot understand. So far as the Sherman Act is concerned, I had supposed that its policy was aimed against attempts to create a monopoly in the doers of the condemned act, or to hinder competition with them. Of course there can be nothing of that sort here. The respondent already has the monopoly of its own goods with the full assent of the law, and no one can compete with it with regard to those goods, which are the only ones concerned. I cannot see how it is unfair competition to say to those to whom the respondent sells and to the world, "You can have my goods only on the terms that I propose," when the existence of any competition in dealing with them depends upon the respondent's will. I see no wrong in so doing, and if I did, I should not think it a wrong within the possible scope of the word unfair. Many unfair devices have been exposed in suits under the Sherman Act, but to whom the respondent's conduct is unfair I do not understand.

Mr. Justice McReynolds also delivered a dissenting opinion. Prefacing the expression of his views with regret at the necessity of dissent, he first discussed the effect of a stipulation that negated the existence of any contract for the maintenance of resale prices, and said:

If the solemn stipulation did not expressly negative the existence of contracts amongst the parties to maintain prices, I should think the detailed facts sufficient to support a finding that there were such agreements. But, starting with that plain negation, I can find no adequate ground for condemning the respondent.

On the main question, the learned Justice said:

Having the undoubted right to sell to whom it will, why should respondent be enjoined from writing down the names of dealers regarded as undesirable customers? Nor does there appear to be any wrong in main-

taining special salesmen who turn over orders to selected wholesalers, and who honestly investigate and report to their principal the treatment accorded its products by dealers. Finally, as respondent may freely select customers, how can injury result from marks on packages which enable it to trace their movements? The privilege to sell or not to sell at will surely involves the right, by open and honest means, to ascertain what selected customers do with goods voluntarily sold to them.

Under the circumstances disclosed, constraint upon the freedom of merchants can only result from withholding trade relations or threatening so to do. These, when acting alone, respondent may assume or decline at pleasure, there being neither monopoly nor attempt to monopolize. And the exercise of this right does not become an unfair method of competition merely because some dealers cannot obtain goods which they desire, and others may be deterred from selling at reduced prices. If a manufacturer should limit his customers to consumers, he would thereby destroy competition among dealers, but neither they nor the public could complain.

The case was argued by Solicitor General Beck for the commission and by Mr. Charles Wesley Dunn for the Beech-Nut Packing Co.

Taxes.—Foreign Railway Companies, Interpretation of a Statute Unconstitutional in Part

Davis vs. Wallace, Adv. Ops., p. 191.

Appeal from a decree of the U. S. District Court of North Dakota, which dismissed a bill to enjoin an excise tax upon interstate railway companies. Reversed.

A statute of North Dakota imposed on foreign corporations doing business in that state a special excise equivalent to 50 cents on each \$1,000 of the capital actually invested in the transaction of business in the state. In the case of corporations engaged in business both within and without the state, "capital invested within the state" was defined to mean that proportion of its entire stock and bond issues which its business within the state bears to its total business, and "business within the state" (when not more conveniently and accurately measured in some other way) was defined to mean that proportion of its entire business which the property employed within the state bears to its total property. There was a proviso applicable to common carriers and certain public utility companies that property within the state should be held to mean that proportion of the entire property which its mileage within the state bore to its entire mileage.

Mr. Justice Vandeventer delivered the opinion of the court and after stating the facts and setting out the statute, the learned Justice said:

The companies were all organized under the laws of states other than North Dakota, and all own lines of railroad extending from other states into or through that state. These lines were under Federal control and operated by the Director General during the years for which the excise tax was assessed.

The taxing officers at first assessed the tax for the year 1918 against these companies by using in its computation the mileage ratio prescribed in the second proviso of the statute; but this court held that the tax so assessed was an unwarranted interference with interstate commerce, and a taking of property without due process of law. (*Wallace v. Hines*, 253 U. S. 66 . . .) Thereupon the taxing officers assessed the tax for that year, and also for 1919, by using in its computation the ratio specified in the last preceding clause of the statute—that is to say, a ratio fixed by contrasting the value of the company's railroad within the state with the value of its entire railroad within and without the state.

The learned Justice then stated the controlling question in the case as follows:

The first of the objections made to the tax is that it was assessed on a basis which the statute does not authorize or sanction. Of course, if this be so, the tax must fall, and the other objections need not be considered.

Citing again the proviso of the statute above referred to, and emphasizing the fact that it (the proviso) had been held unconstitutional, the learned Justice said:

This provision shows that the legislature intended by it to put the corporations which it describes in a separate class for the purposes of the tax, to require as to them that the tax be computed and assessed on the special basis there prescribed, and to exempt them from the bases applicable to other corporations. That intention hardly could have been more clearly expressed. . . . Where an excepting provision in a statute is found unconstitutional, courts very generally hold that this does not work an enlargement of the scope or operation of other provisions with which that provision was enacted and

which it was intended to qualify or restrain. Here the excepting provision was in the statute when it was enacted, and there can be no doubt that the legislature intended that the meaning of the other provisions should be taken as restricted accordingly. Only with that restricted meaning did they receive the legislative sanction which was essential to make them part of the statute law of the state; and no other authority is competent to give them a larger application.

The learned Justice stated his application of these principles in the following concluding paragraph:

From what has been said it follows that, to sustain the tax in question, we should have to hold that the taxing officers, on finding that it could not constitutionally be assessed on the basis especially prescribed in the statute, were at liberty to assess it on another and different basis which the statute shows was not to be applied to corporations of the class to which these railroad companies belong. Of course we cannot so hold.

The case was argued by Mr. C. W. Bunn for the railroads and by Mr. George E. Wallace for the state taxing officials.

SELECTION OF EXPERT WITNESSES

Method of Choice by Court, With Certain Standardized Compensation, Likely to Secure More Disinterested Testimony and Thus Tend to Remove One Ground of Public Criticism*

By C. E. McBRIDE
President of Ohio State Bar Association

IN casting about for some fruitful subject for discussion at this time, it occurred to me that the subject of the Selection of Experts who testify in cases, whether by the litigants or by the courts, would be a most opportune one.

The trial court should have the power to determine the fact of the possession of the required expert qualification of a particular witness—this absolutely and without review. It has been repeatedly declared that the decision upon the experiential qualifications of witnesses should be left to the determination of the court. Often enough the matter to be testified to is one upon which it would be clearly presumptuous for a person of only ordinary experience to assume to trust his senses, for the purposes of his own action in the ordinary serious affairs of life. Some reliance must be placed upon the intelligence and good faith of the witnesses and the judgment and discrimination of the jurors.

Too often, as for example, in the notorious Thaw trial, conflicting expert witnesses have been called by prosecution and defendant, much to the amusement and disgust of the public. The impression is gaining, whether rightfully or wrongfully, that witnesses can be bought to present expert scientific testimony. Chemists hired by manufacturers have testified to the harmlessness of ingredients which disinterested scientists have regarded as injurious to the human constitution.

The slightest reflection ought to convince any one that litigants should have no choice in the selection of expert witnesses, but should bow to the authority of the court in the determination of the necessity for calling them, as also in their selection.

The uncertain and contradictory character of expert testimony has weakened its force and effect in the

trial of causes. In a New York case Judge Roosevelt said: "An ounce of fact is worth a pound of opinion." The use of experts, in many instances, when called by litigants, has resulted in long-drawn-out trials without any great material assistance to the jury. How to remedy this situation becomes an important question in our legal procedure.

One superior consideration is that court appointments, being more in the public interest, are likely to evoke less biased and more honest, disinterested effort on the part of appointed witnesses. There are serious difficulties to be met with by any other method. There are difficulties in applying any fixed rule for all classes of cases and all communities. But the plan of appointment of experts by the court seems to receive general support both in professional and in public opinion. This method has been proposed by a number of writers in the various Law Reviews.

It rests with the court to decide whether for a particular subject of testimony the general or ordinary experience of a layman is sufficient. Litigants frequently are prone to choose expert witnesses and to insist on special accomplishments where justice would be better served by a laxer attitude. A stand must be taken against the undue extension of the topics upon which special experience is required for testifying.

Then, too, there is systematic training directed deliberately to the acquisition of fitness and involving the study of a body of knowledge furnishing a branch of some science or art—termed "Scientific Experience." No accurate line can be drawn between these two classes, and it should be left to the discretion of the court to choose witnesses from such local lists as are available, just as courts appoint disinterested special

*Address delivered at the mid-winter meeting of the Ohio State Bar Association at Akron, Jan. 27.

Masters or Receivers. The judge decides whether the particular witness is fitted as to the matter in hand.

On many points the nature of the subject is such that a scientific training is indispensable, but rulings requiring it made no general discrimination between the two sources of fitness, experience or training.

In *Kelley vs. Richardson*, 67 Mich. 436, Campbell, Judge, said:

There are branches of business or occupations where some intelligence is required for judgment, but opportunities and habits of observation must be combined with some practical experience. As the scale rises, the qualification becomes nicer and requires greater capacity or knowledge and experience, until it reaches scientific observers and practitioners in arts and sciences requiring peculiar and thorough special training.

Evidently the judge should decide on the choice of skill or capacity gained in the ordinary course of life, and that attainable by special, peculiar and out-of-the-ordinary experience and knowledge gained by study and specialization. It thus comes that the rulings of courts applying the requirements of experimental capacity also apply to the choice of witnesses most fitted by experience to testify to the particular facts under judicial determination or jury decision.

The court is so well invested with the discretion in the matter of passing on the competency of witnesses, that it seems to follow that the court should also appoint witnesses qualified as experts. The court can exclude evidence on the ground that it is superfluous and opinionative, because the other facts are already brought sufficiently before the tribunal. Great liberality is shown by courts in passing on witnesses and applying these principles so that the cause of justice may not be obstructed by narrow and technical rulings.

To the modern reluctance of the English Bar to dispute over trifling points of evidence must be attributed the absence of English rulings on this doctrine. In our own country, and in the State of Ohio in particular, narrow, technical objections, though constantly made, are discomfited and a policy of considerable liberality is enforced.

The court passes, for example, on whether special qualifications are required to pass on blood stains, or a question of sanity, and should also have the option of appointing experts to determine thereupon in these cases. The incompetency of the layman to form an opinion has entered into the grounds of decision of the court to appoint expert witnesses to pass on disputed points.

Historically considered, witnesses are usually appointed by the courts. In France, whenever the court considers that a report by experts is necessary, it is ordered by a judgment clearly setting forth both the object and the necessity of the same. The experts are to be appointed, unless the parties agree upon one only as decided by the court. The necessary documentary and other evidence is laid before them and they make a single report to the court. If the court is not satisfied with the report, new experts may be appointed; the judges are not bound to adopt the opinion of the experts.

In the French Canonical Courts, expert investigations are usually conducted by special experts officially attached to each of the courts. A similar system is found in force in many other countries of Europe; all courts of civil procedure of Holland, Belgium, Italy and the countries where French law has been followed, as Quebec and St. Lucia. In England each side calls its own evidence. Earlier in history,

however, the English courts were in the habit of summoning to their assistance, apparently as advisers, persons specially qualified to advise upon any scientific or technical question that required to be determined. Thus in an appeal of mayhem in the reign of Henry the Seventh, a writ was sent to the sheriff to cause to be sent to court a skilled physician of London to testify before the King's Court. Not only was expert assistance called for by judges on Medico-legal cases, but as early as 1554 Justice Sanders applied for aid on a scientific matter.

Witnesses are not compelled to testify unless paid, upon an undertaking by the party calling them, a reasonable remuneration for their services in giving evidence. The evil effect of this is that it is a fact well known to every practitioner at the bar, and within the judicial knowledge of the courts, that experts on both sides of a cause too often become eager attorneys before the trial is ended and before their testimony is given.

Surrogate Colvin of New York says:

Considerable experience has taught me that the testimony of experts who are selected by the party in whose behalf their testimony is to be given, and where testimony in his favor is assured beforehand, is likely to be considerably influenced by the fact that the experts have been employed as such by the party calling them, and that while on the stand they are paid to have a theory, which they are zealous to maintain; and as a general rule they fall short of that impartiality which characterizes ordinary witnesses in courts; and this observation has led me to scrutinize with great care the testimony given under such circumstances.

While another New York Surrogate said:

The present system of presenting the testimony of experts, in the courts, is poorly calculated to assist in arriving at the exact truth. The expert produced as a witness has almost invariably given assurance that he will swear to an opinion favorable to the party calling him, and for this he usually receives a fee proportioned to his estimate of the value of his opinion to the side for which he testifies.

In the case of *Roberts vs. New York Central Railroad Co.*, 128 N. Y. 455, Peckham, Judge, speaking of expert testimony, said:

Expert evidence, so called, or, in other words, evidence of the mere opinions of witnesses, has been used to such an extent that the evidence given by them has come to be looked upon with great suspicion by both courts and juries, and the fact has become very plain that in any case where opinion evidence is admissible the particular kind of an opinion desired by any party to the investigation can be readily procured by paying the market price therefor. He (the expert) comes on the stand to swear in favor of the party calling him, and it may be said he always justifies by his works the faith that has been placed in him.

The matter of witness fees in case the court appoints the expert can be determined by the usual practice and standardized. Thus an expert, a physician, a chemist, engineer, hand-writing expert, or the trained testimony of any kind that offers aid, may be paid a fixed sum, regardless of the wealth of litigants, this amount to be collected as part of the costs. Just as a standard sum is paid to jurors, who are thus moved by civic duty rather than the remuneration, even so experts who serve the court will be no less faithful in the discharge of their duty though the fees be small, in fact nominal.

In the trial of cases where plaintiff or defendant is without means to hire the best experts, such appointed experts will be enabled to serve without an undue tax on their resources. The expert loses a little

time, but he has served the court and the public who make his prosperity possible.

There is ample warrant in English law for the summoning of expert witnesses by the legal tribunals in various cases. The Judge of a county court may, if he see fit, on application of either party call in as assessor one or more jurors of skill and experience, as also in employers' liability cases, and also in Admiralty matters. In patent cases, and in the High Court of Appeals, and in the Judicial Committee of the Privy Council, one or more qualified jurors may be called in to assist in the hearing of a cause in any matter except a criminal proceeding by the Crown.

There is a growing sentiment in favor of the employment of expert witnesses by the court, as is observed in Rogers on Law of Expert Testimony; Lawson on Law of Expert and Opinion Evidence; Foster on Expert Testimony, and other writers along the same lines.

It is said that quite recently a learned judge in New York City advised the jury to put all the expert testimony out of their minds and pay no attention to it. This he did, although a week had been consumed in taking expert testimony, because "an equal number of doctors had testified directly opposite to each other, and all with equal positiveness."

The present system has its strong advocates and no radical change is to be expected in the near future with reference to the method of appointment of expert witnesses. The law allows no excuse for withholding evidence. The expert witness in the performance of his duty as a good citizen should be compelled to testify when his evidence would be helpful to a court or jury, whether his evidence is based on personal observation or some fact connected with the case or upon his accumulated knowledge and experience. Due consideration is given the point that to compel a person to attend as a witness would subject the same person to be called on in every case where his opinion would carry weight, because he is accomplished in a particular science, art or profession.

Authorities conflict, however, on the question whether a person can be compelled to attend and testify as an expert for the fees of an ordinary witness. In that case fees might be made higher for those called in to advise in an expert capacity, which is a matter strictly within the judicial determination, notwithstanding that in England and in many of the States it has been assumed in the negative, either by judicial decision or by statute. However, when the case is before the court and jury it is always for the court to say whether the question calls for expert evidence as well as whether a particular witness is qualified to speak as an expert.

The appointment of the experts by the court would get rid of the confusion and bias of experts selected by the litigants. In the Patrick murder case, Judge O'Brien spoke of the minds of expert witnesses as "affected by that pride of opinion and that kind of mental fascination with which men are affected when engaged in the pursuit of what they call scientific inquiries."

Pope in his *Essay on Criticism* says:

Of all the causes which conspire to blind
Man's erring judgment, and misguide the mind,
What the weak head with strongest bias rules,
Is Pride, the never failing vice of fools.

And again in *Moral Essays*, Epistle one, we have the authority of Pope that:

To observations which ourselves we make,
We grow more partial for the observer's sake.

If it is not certain that persons called by litigants to testify as experts will always form their opinions under a bias of which they may be unconscious, in favor of the conclusion which they are expected to support, there is ground for apprehending that such, to a greater or less extent, will often and indeed generally be the case; while the fact that the witnesses are men of character and skill may give undue weight to their opinions, and thus add to the danger of such testimony.

In the case of *Shorm vs. Hill*, 26 Fed. Rep., 337, Judge Deady says:

While there is nothing very unusual in an arrangement whereby the compensation of an expert is made contingent in some degree on the success of the party employing him, yet until experts are nominated by the court and paid by the State, the circumstance of their being retained by the parties must always be considered in estimating the value of their services.

This is strong language from a Judge of exceptional ability and long experience and observation on the bench. Men are very apt to believe what they wish, and opinion may be composed of very elastic materials. The Scotch poet, Robert Burns, puts it thus:

But, och! Mankind are unco weak
An' little to be trusted;
If self the wavering balance shake,
It's rarely right adjusted.

The strong bias of interest upon a mind long pondering over, and much excited upon, one subject has doubtless produced genuine convictions of the truth of things to which he testifies.

Dr. Johnson said to Mrs. Thrale: "It is more from carelessness about truth than from intentional lying that there is so much falsehood in the world." Our opinions are much more frequently founded on prejudices, or biased by our feelings, than we are aware of.

Experts can be summoned by the court and paid such fees as the court may fix, or may be fixed by statute. Being known as a profession or listed in a particular line of work, the court may make selections and appointments just as jurors are selected. While the non-expert testifies to the subject matter readily mastered by the adjudicating tribunal, the expert gives conclusions outside that range and gives the results of a process of reasoning which can be obtained only by special study. He can readily be appointed by the court for he is known to be one instructed by experience and to have followed a career of experience, practice and study.

Mr. Lawson in "Expert Evidence," page 210, lays down the rule that one may be qualified as an expert witness by studying without practice or practice without studying. He justly adds that mere observation without either study or practice will be insufficient. In either instance court determines whether the expert is qualified and, by having the appointive power, avoids delays in cross-examining as to competency and in investigations as to his fitness during trials.

As the warrant for the admission of opinions of witnesses in evidence is found in some exceptions to the general and very salutary rule which requires that only facts be stated to the jury, it is the duty of a reviewing court to see that the admission of mere opinion evidence was within some one of the established exceptions to such general rule. Where it does not appear on the whole record but that the jury was equally capable with the witnesses of forming an opinion from

the facts stated, it is error to admit in evidence the opinions of witnesses. Such opinions as expressed in *Railroad Co. vs. Schultz*, 43 O. S., 270, seem clearly to sanction and confirm judges in their power to appoint and pass on witnesses as experts.

Litigants may, and too often do, select incompetent experts. A physician, for example, cannot be permitted to decide upon the credibility of a witness, nor to take into consideration facts known to him and not communicated to the jury. The opinion of a medical witness may rest in part on statements made by his patient. Upon this subject the authorities are in harmony, although there is some difference of opinion as to whether statements of past symptoms may be taken into consideration.

In *McLain vs. Commonwealth*, 99 Pa. 86, two sets of experts held opposite views as to blood stains on a shovel, and persons without any special training testified that in their opinion the stains were caused by human blood. The court remarked that if scientific research gave no aid in such an investigation, it was deplorable, and instructed the jury that they might convict upon the testimony of unlearned witnesses if they were satisfied of the truth.

In effect the court herein appointed the witnesses in the case. Frequently experts are called by litigants, as for instance, touching testamentary capacity, where such experts are needless. The testimony of experts is entitled to but little weight as against proof of facts and circumstances which show mental and testamentary capacity. Often it is plain that those having a special interest in the subject have so charged their memories with various matters as distinct, independent facts as to be able to present them in their entirety to a jury. If such a witness is found, can he conceal from the jury the impressions which have been made upon his mind? Can it be doubted that his judgment has been influenced by many circumstances which he has not communicated? A witness should not be allowed to give his opinion until he has first shown upon what he bases his opinion, absolutely and without prejudice.

In industrial cases involving facts of science or industrial act, witnesses of trained observation often conflict. The wish is father to the thought and the hired expert is unconsciously a partisan in his reports—even sees things in the light of a theory—deduction of the facts from his inference, so to say—the discredited method of scientific discovery. If you consider the hypothesis of chemistry and electricity, you enter a problematical sphere in which evidence and scientific data can be arranged to suit two or more theories. Much depends on the temper of one's mind as to the interpretation of facts. Psychologically this is known as "apperceptiveness" or groups of thoughts and experiences inherent in the individual and varying according to the apperceptive or experiential elements of other observers.

It is not the eye that sees but the mind, is a maxim of psychology that applies to the matter in question. And hence it is that there should be no obscurational elements of self-interest or sympathy entering into the witness stand where the tried voice of science and truth only should be heard.

In matters such as the determination of sanity, the fact of prejudice is often demonstrated and hired experts often swear in opposition until the trial degenerates into a battle royal between the hired experts; and the proceedings are prolonged to an unusual and

unnecessary degree, greatly to the disgust and just criticism of the public. The facts are the same, but the experts see things according to their apperceptive leanings and the size of their fees.

Appointment of these experts by the court would enable an expert to give his indifferent judgment without any bias. A fee based upon the wealth of litigants is not present, and so the opinions of the witness represent the cold facts of the case as he sees them, unmodified by self-interest and pecuniary matters. As much as a half million dollars may be invested in an insanity, testamentary or engineering case by interested litigants to the confusion of justice and the debasing of public morals. The administration of justice should not be interfered with by bribery and lavish use of money, when a wealthy litigant seeks to avoid punishment or damages.

In an accident case, say on a city railway line, the poor litigant needs the protection of the court and the benefit of scientific appraisal of the injuries done. In such a matter as death by coming in contact with heavily charged electric wire there can be much uncertainty, and experts hired by a corporation are likely to contradict attorneys and witnesses of the litigant. The manner of the burn, extent of injury from shock, are matters to be appraised by experts, true; but experts indifferent to corporations and looking only to the public interest. Such a fine condition of indifference is best secured by giving the court power to select the experts and fix their fees and order it paid out of the same fund the jurors are paid from.

Various plans have been suggested as the proper method of remedying this class of evils. In 1899 Justice Bartlett in an address before the State Medical Association of New York, suggested the following: *First*: "The appointment of a Committee of insanity matters, to examine the person alleged to be insane before trial and make such a report to be read at the trial when all the members of the Commission must attend to be cross examined as either party may desire." *Second*: "The appointment of a like Commission in any case involving a question of medical expert evidence, to report to the court and testify at the instance of either party, without any compensation except a fee to be fixed and paid by the State." *Third*: "The relegation of all matters calling for expert testimony to a commission of experts who shall transmit their determination to the trial court, who must accept it as a fact conclusively established in the case." *Fourth*: "The appointment of expert witnesses who must qualify themselves to give opinion evidence in the case without consultation with the litigants or their counsel, and who shall be compensated for their services out of the county treasury of the county in which the trial takes place."

The New York State Bar Association offered a Bill drafted along the above lines, but it was never enacted into a statute. The purpose of creating such a class of witnesses is to give their testimony a higher authority than that of others whom the litigants may call to testify on the same points. Under these circumstances the jury would understand that the judge deemed the experts whom he had appointed peculiarly capable of expressing a correct opinion. The jury would then be morally certain to accept the opinion of such experts in preference to those of non-official witnesses who thought otherwise. Not that this would be a privileged class of expert witnesses, but that the court

would have the power to select experts or a commission from recognized sources of authority.

I think this is the viewpoint that is deemed fair. This will do away with the subsidized expert witnesses. To such a tribunal or body of experts would be transferred the present so called expert evidence. It, at least, would eliminate the opportunity that litigants now have of calling all the experts that money can procure or diligence discover and putting to them hypothetical questions for them to answer, till the crack of doom; and to that is added a long, tedious cross examination which is usually nothing but a battle of wit between the expert and cross examiner. The time occupied in such a performance is one of the things that causes the public to lose faith and confidence in courts and juries, and is bringing the administration of justice into disrepute.

In Michigan in 1905 a statute was passed limiting the number of expert witnesses who may be called by a side to three, and it limits compensation to ordinary witness fees and makes it a criminal offense to pay or receive more. In cases of homicide the court appoints "one or more disinterested persons" to testify as experts to be paid by the county. The Rhode Island Court and Procedure Act of 1905 provides for the appointment on motion of any party of an expert whose fee may be taxed as costs against the losing party, who shall make a report to the court and be thereafter examined at the trial. Neither of these statutes remedies the evil, because they do not do away with experts called by litigants. The remedy is not necessarily the enactment of new statutes, but to find some method by which fake expert testimony may be made impossible to be bought and sold in the public courts.

Judge Endlich at the Pennsylvania State Bar Association meeting in 1891 endeavored to introduce restrictions into the several provinces of expert testimony rather than change the fundamental idea of expert for the purpose of minimizing venality and incompetency. Restrictions are useful for a class which is not actuated by high principle. It is possible to imagine a case of hardship when a desirable expert witness would be excluded because not properly belonging to the strict classification zone, but the scheme should be drastic even though it does occasional injustice.

In both France and Germany the law provides for the appointment by each court of a specific number of permanent experts, whose duty it then becomes to familiarize themselves with the particular learning necessary to qualify them in the particular branch or phase to which they may be called. There is an organized tribunal of experts to which the opinions of expert witnesses can be referred.

A similar system could be readily grafted on our American practice. There would be no difficulty in providing in each county for a County Physician, who, by the tests of an adequate competitive examination, shall show his general and special competency for this particular post.

In addition to the duties devolved upon him of conducting post mortem examinations, and of pursuing any other investigations that may be required in a litigated issue, such a physician might be made the arbiter in those moot questions by which the law has been kept in a state of such distressing incertitude.

Is there such a disease as moral insanity, or as mania transitoria? Can human blood stains be distinguished after having become dried? If a question of this kind arises on the trial of a cause, it would not be inconsistent with the analogies of the law to refer it to an official expert, just the way that a chancellor

sends a question of fact to be determined by a master in chancery or by a common law court and jury. But if this be done, it should be done with the checks which attend the chancery system. The official physician who acts as referee must be placed under judicial restraint.

He should owe his appointment to neither party, but to the State, irrespective of any particular case. His duty should be to take testimony, if needed, on the case, and to hear counsel, so that he will be in no danger of hazarding one of those rash and ignorant opinions which have so much disgraced this branch of medical practice. After thus judicially hearing the case, it should be his further duty to judicially certify his opinion to the court by whom the reference is made. In proper cases there might be allowed an appeal from such opinions to a supreme court of governmental experts appointed by the State at large.

It may be said that this may be productive of occasional delay. This is true; but the difficulties thus arising would not be so great as those which almost every contested medical issue now involves and which, in cases of insanity, have led courts so often to grant new trials from sheer despair of drawing a decisive conclusion from the jargon introduced.

Soon, also, the delays of appeals would be reduced; for certain great cardinal questions would be settled beyond dispute. We should soon know whether there is such a thing as moral insanity, and whether it is practicable to distinguish human blood after the expiration of a week from the period of its drying. Settle a few such points as these, and we relieve criminal justice of a large part of the uncertainties by which it is now beset, and we will have a series of rules by which cases can be intelligently, consistently, and humanely conducted.

Now will this be all. We will be able to get the judicial utterance of science as to vexed issues of fact, instead of interested arguments of experts who are virtually employed as counsel by party calling them, or the wild utterances of philosophic monomaniacs who are simply called because of their absorption in some unique theory of their special concoction. Such men need not be silenced. Experts as counsel, indeed, will find a proper and important office in presenting the two sides of the issue to the expert who acts as referee. But the expert who fills this last judicial post will be disengaged of all personal relations. He will have no client to serve, and no past partisan extravagances to vindicate. He will render his opinion as the advocate neither of another nor of himself. When he speaks he will do so judicially, as the representative of the sense of the special branch of science which the case invokes, governed by the opinions of the great body of scientists in this relation, and advised of the most secret investigation.

When this is done, we will have expert evidence rescued from the disrepute into which it has now fallen, and invested with its true rights as the expression of the particular branch of science for which it speaks.

Annual Meeting to Be Great Stimulus

"The American Bar Association will meet in San Francisco August 9, 10 and 11, 1922. . . . We shall have the opportunity of meeting and hearing from some of the ablest judges and lawyers in the country. It will be the greatest stimulus to the development of the law and to legal education. The inspiration of the meeting will be felt for years to come."—Cal. L. Rev. Jan.

Public Meeting of Committee on Commerce, Trade and Commercial Law

THE American Bar Association Committee on Commerce, Trade and Commercial Law will hold a public meeting March 20 to 31st, 1922, inclusive, in the Assembly Room of the Merchants Association, Woolworth Building, New York City, for consideration, discussion and recommendation by all persons interested in respect to the subject matter appearing upon the tentative agenda of the meeting, as follows:

TENTATIVE AGENDA

Wednesday, March 29th, 1922:

I. 10:00 A. M.

Spencer Senate Bill No. 2921—To amend National Bankruptcy Act.

For contents of Bill and discussion thereof, see A. B. A. 1921 Report, pp. 361-364.

II. 11:00 A. M.

A Bill giving a right to Intervene Before Administrative Bodies.

For discussion of this subject, see A. B. A. 1921 Report, pp. 340-343.

III. 2:00 P. M.

Amendment of Section 20 of the Uniform State Warehouse Receipt Act.

For subject matter and discussion on this subject, see A. B. A. 1921 Reports, pp. 343-346.

IV. 3:00 P. M.

Amendments of Sections 32 and 38, Uniform State Sales Act, and Sections 40 and 47, Uniform State Warehouse Receipt Act.

For discussion of these amendments, see A. B. A. 1921 Report, pp. 347-349.

V. 4:00 P. M.

Uniform State Arbitration Act as Affecting Commercial Matters.

For discussion thereon, see A. B. A. 1921 Reports, pp. 355-359.

Thursday, March 30th, 1922:

VI. 10:00 A. M.

Uniform State Declaratory Judgment Act, as Affecting Actual Commercial Disputes and Controversies.

For discussion thereon, see A. B. A. 1921 Report, pp. 349-352.

VII. 11:00 A. M.

Professional Ethics and Trade Associations.

Discussion thereon, A. B. A. 1921 Report, pp. 302 to 308 and page 354.

VIII. 2:00 P. M.

The Legal Status of Trade Associations and Their Functions.

The functions being performed by these associations in National life make necessary the enactment of legislature defining their functions and their status.

IX. 3:00 P. M.

A Federal Act for the Arbitration of Actual Commercial Disputes and Controversies.

For discussion thereon and tentative draft of a law, see A. B. A. 1921 Report, page 35.

X. 4:00 P. M.

Treaty Provisions for the Arbitration of Actual Commercial Disputes and Controversies.

The Committee wishes a full discussion on this subject.

Friday, March 31st, 1922:

XI. 10:00 A. M.

United States National Sales Act in Interstate and Foreign Commerce.

For tentative draft and discussion thereon, see A. B. A. 1921 Report, pp. 314-332.

XII. 11:00 A. M.

Pomerene Senate Bill No. 2530, to Amend the Pomerene Bills of Lading Act in Interstate and Foreign Commerce.

For draft and discussion thereon, see A. B. A. 1921 Report, pp. 332-337.

Committee especially desires discussed the matter of striking from Section 21 of said Bill, at page 7 thereof, lines 20 to 24, in words as follows:

And such common carrier need not file, publish or post said charge or embody same in any tariff or any publication, and such charge shall be the subject of a private agreement between the shipper and the common carrier.

XIII. 12:00 M.

United States District Courts to Sit as Commercial Courts.

For discussion on this subject, see A. B. A. 1921 Report, pp. 53-54 and pp. 354-355.

XIV. 2:00 P. M.

Declaratory Orders and Advisory Opinions of Administrative Bodies.

The Committee hopes for full discussion on this subject.

XV. 2:30 P. M.

National Merchandise Marks Act.

For discussion, see A. B. A. 1921 Report, page 312.

XVI. 3:00 P. M.

Senate Bill No. 77, to Provide for the Payment of Interest on Judgments rendered against the United States for Money Due on Public Work:

See A. B. A. 1921 Report, page 54.

XVII. 3:30 P. M.

Other Subjects:

Committee will take up other subjects covered in A. B. A. 1921 Report, pp. 308-312.

XVII. 3:45 P. M.

Executive Session of Committee.

Decline of the Duello

"Sentiment against duelling has found fresh expression in the report of the Commission of the Chamber of Deputies, which has been examining the question. The Commission has been examining a project to treat duelling on a different basis from other killings and assaults, but it has unanimously decided that the right way to treat the duellist is to subject him to the ordinary processes of the law—that is to say, that there should be no distinction made between two gentlemen who fight with swords or pistols over some "point of honor" and two navvies who fight with their fists or knives because they have quarreled. In the one case as in the other the offenders must be tried for murder or homicide or for unlawful wounding. Of course, it is for the juries to say what extenuating circumstances there are in each case."—Paris cable.

CURRENT LEGISLATION

It will be the purpose of this Department to bring to the attention of the bar the interesting changes in the fields of law which are being made by the legislatures. No person can be more alive to the possibilities of error, especially errors of omission, than the editors of the Department. The work of collecting the statutes for the past year has been performed under great difficulty, but it is hoped that it will be more successful with

greater experience. The notes in the department will be simply a statement of the law as it appears in the statutes, with little or no attempt at its interpretation through a discussion of the cases. It is hoped that members of the bar will co-operate in calling the attention of the editors to omissions and mistakes and in supplying them with important new statutes in their states. Only by such co-operation can the department succeed.

Some Recent Insurance Legislation

BY THOMAS I. PARKINSON and

J. P. CHAMBERLAIN

IN the Revenue Act of 1921 there was included an article imposing a novel Federal tax on life insurance companies in lieu of corporate income and profits taxes. This tax takes account of the fact that the reserves of a life insurance company are accumulated annually to provide the funds to meet the policies on their maturity. Therefore, it is provided that of the income of a life company there shall be exempt from income taxes a sum equal to 4 per cent of the legal reserve. The excess above 4 per cent is subjected to tax. One of the most interesting features of this tax is the skillful way in which the constitutional exemption of income from public bonds is avoided. While the act specifically continues the exemptions provided for in the Revenue Law in the case of income of Liberty bonds and state and municipal bonds, the amount of this deduction is deducted from the sum which becomes free from taxation as representing 4 per cent of the reserve. The life company enjoys a freedom from taxation up to 4 per cent of its reserve, whether or not a portion of this income is derived from Liberty or state bonds. The result is substantially to avoid the constitutional exemption enjoyed by income from state and municipal securities in the hands of life insurance companies. It is easy to see the possibilities of further extension of this device which may have a bearing on the necessity for a constitutional amendment to make state and municipal bond income subject to Federal income taxes.

The "incontestable clause" is required by the laws of most of the states to be inserted in life insurance policies. The statutes usually provide that the policy shall state that it "shall be incontestable after two years from its date." In *Ramsay v. Old Colony Life Co.* (297 Ill. 592, 1921) the two-year period had not expired at the time of the insured's death but had expired before action was brought on the policy. The court held the policy incontestable, rejecting the argument that the intention was to make the policy incontestable only where the insured lived through the two-year period. Statutes were promptly passed in Ill. (1921, p. 482), New York (1921, Ch. 407) and Pa. (No. 284 §410) amending the incontestable clause so that the life policy is made incontestable only where it has been in force "during the lifetime of the insured"

for the period of two years. This decision and these amendments indicate the importance of accuracy in the phrasing of such statutory provisions. Nevertheless the Wyoming Insurance Code adopted in 1921 (Ch. 142, §32) has included an incontestable clause which follows the wording of the Illinois statute prior to the amendment. That some confusion may result from the varying language of the incontestable clause in the different states is shown by the Ohio Insurance Commissioner's recent disapproval of policy forms containing an incontestable clause in the language of the New York and Illinois amendments because the Ohio statute does not contain the language of the amendment.

Another result of the interpretation put upon the incontestable clause in the *Ramsay* case is that if the Insurance Company is to enjoy the right to contest the policy for the full two-year period, it must be permitted to bring action to avoid the policy after the insured's death, if death occurs within the two-year period. Heretofore it has been held that the company could not proceed in equity for a rescission of the contract because after the insured's death it enjoyed a full remedy in an action at law by the beneficiaries.

The contest between the creditors and the beneficiaries of the assured for the proceeds of his life insurance policy is illustrated in several recent statutes. The right of the trustee in bankruptcy under §70-a of the Federal Bankruptcy Act (*Cohen v. Samuels*, 245 U. S. 50) to demand the cash surrender value of the policy when the insured has reserved the power to change the beneficiary, is now established; but this rule does not apply where the proceeds of the policy are by the laws of the state exempt from creditors. Alaska (1921, ch. 29) provides that the proceeds or present value of a life policy "shall inure to the sole and separate use and benefit of the beneficiaries" and shall be free from the claims of creditors. The Wyoming Code (§36) expressly declares that the reservation by the insured of the right to change the beneficiary "shall in no wise make any value payable thereunder either before or after the death of the insured available to creditors in any proceeding in law or in equity."

The right of a minor to contract for life insurance in favor of himself or specified near relatives is declared in Connecticut (Ch. 93) and Maine (Ch. 327). These acts expressly give to the minor all the contractual rights under an insurance policy which might be exercised by a person of full age, including the power to give a valid discharge for the surrender value or other benefit accruing under the policy.

The "insurable interest" necessary to sustain a life policy is defined in Pennsylvania (No. 28, §412) as "an interest engendered by love and affection" or "a lawful

economic interest in having the life of the insured continue, as distinguished from an interest which would arise only by the death of the insured." The definition seems to change the rule established by the Pennsylvania cases, for example, that an adult son has an insurable interest in his father's life only when legally liable for his support, and illustrates the difficulty of codification of general legal principles.

Corporations are given an insurable interest in the lives of their officers, stockholders or members in Texas (Ch. 84). In declaring an emergency for the purpose of making the act immediately effective, the legislature refers to the fact that the courts of Texas had previously held that corporations did not have an insurable interest in such cases. It is not clear from the statute whether it simply authorizes the corporation to be named as beneficiary in a policy taken by the corporate officer, or whether the corporation is authorized to become the prime mover in taking the policy upon its officer's life.

Workmen's compensation insurance laws illustrate the tendency to convert liability insurance protecting the insured against loss by reason of damage to persons or property into insurance giving the person suffering such damage a direct right of action against the insurance company. Rhode Island (1921, Ch. 2094) goes further and requires all liability policies to contain a provision making the insurance company directly liable to the person suffering the damage. This effort to assist the claimant in a tort action to realize on his judgment creates some interesting situations. The Rhode Island act gives the benefit of the insurance contract to a third person, who is unknown to either of the parties to the contract at the time it is made. A person injured through the negligence of one who

carries no insurance is left to his remedies against the tort-feasor alone. If the injured person came by his damage through the negligence of a tort-feasor who happened to carry insurance, the policy stands as a guarantee of payment of a judgment against the tort-feasor. The result is to give insurance protection to those suffering injury at the hands of persons who have been thoughtful enough to take out liability insurance.

The effect of a breach of warranty in a fire policy is changed by Michigan (H. B. 68), which provides that no fire policy shall be avoided by a breach of a condition where the loss does not happen during the breach or is not occasioned by the breach, or the underwriter is not injured by the breach. In so far as this permits a recovery for a loss occurring after breach but not during the continuance of the breach, it is in accord with the decisions which hold that a temporary breach suspends but does not avoid the policy. But in so far as this statute prevents the avoidance of a policy because of a breach which does not injure the underwriter or which does not cause the loss it changes the rule that breaches of warranty avoid the policy irrespective of their materiality in contributing to the loss.

An interesting new power is conferred upon the insurance commissioner by New Hampshire (H. B. 294) which authorizes him to investigate the origin of fires in order to determine whether they are the result of carelessness or design. If he should be of opinion that there is evidence sufficient to charge any one with the crime of arson, he is directed to cause the arrest of such person and to furnish the prosecuting attorney with all the evidence which his investigation has disclosed.

CURRENT LEGAL LITERATURE

A Guide to Recent Books in Law and in Neighboring fields and to Current Legal Periodicals

Among Recent Books

FEDERAL ESTATE TAX. By Raymond D. Thurber, Albany, N. Y.: Matthew Bender & Co.—The author of this book was connected for several years with the Law Department of the Bureau of Internal Revenue and assisted in the preparation of the present Estate Tax regulations of that Bureau. This book contains, in addition to the statute and the present Estate Tax regulations, citations of and quotations from the court decisions construing the Federal Statute and bearing upon its construction. There are included also departmental decisions relating to the Estate Tax, some of which, it is said, are made public in this volume for the first time. There is printed a collection of the forms in use in the Department.

THE LAW OF BUSINESS PAPER AND SECURITY. By Chas. F. Dolle, Chicago: T. H. Flood & Co.—This book of 423 pages contains the Negotiable Instrument Laws with case annotations, and also a summary of the law concerning collections of checks and other instruments, quasi-negotiable instruments, bills of lading, warehouse receipts and the transfer of certificates of stock. It is a book useful in content and very convenient in form. Mechanically it is a splendid specimen of book making.

THE TENANT AND HIS LANDLORD. By Edgar J. Lauer and Victor House. New York: Baker, Voorhis & Co.—The purpose of this book, as stated by the authors in the Introduction, is to clarify the subject of rights and obligations of tenant and landlord in New York, with particular reference to the so-called "Emergency" Laws passed by the New York Legislature to remedy the post-war housing situation in New York City. The new legislation, which as is generally known was principally for the protection of the tenant, is analyzed in a summary way, and to this have been added annotations of such cases as have come from the courts and appear pertinent. Much space is also given to the remedies available to both landlord and tenant, and of course the question of what constitutes a "reasonable" rent under the new laws is treated at some length, though perhaps inconclusively. The book supplies in a great measure the need for a handy presentation of the revised law and should prove useful to both lawyer and layman.

WHAT'S WHAT IN THE LABOR MOVEMENT. By Waldo R. Browne. New York: B. W. Huebsch, Inc.—This is a book of almost 600 pages, containing a definition and discussion of about 1,500 terms in common use in the Modern Labor movement. These explana-

tions and definitions are arranged in dictionary form. Lawyers dealing with any aspect of the labor problem will find this book very useful as a reference work.

INDUSTRY AND HUMAN WELFARE. By William L. Chenery. New York: The Macmillan Company.—The author is the industrial editor of *The Survey* and editorial writer for *The New York Globe*. This little book of 166 pages will prove useful for those seeking to get in a brief form a background upon which to project consideration of the labor problem. All of the chapters of this book have been carefully written by one obviously seeking to envisage his problem from a non-partisan viewpoint.

LIBERALISM AND INDUSTRY. By Ramsay Muir. Boston and New York: Houghton Mifflin & Co.—From the preface: "This little book is the outcome of discussions carried on by Manchester men, mostly engaged in industry, who were asked by the Manchester Liberal Federation to consider what ought to be the main lines of a Liberal industrial policy." From the jacket: "In almost every country today political forces are diverging to an extreme conservatism on the one hand and revolution on the other. This far-sighted book, written with the assistance of Lord Haldane, represents an attempt to find a middle-of-the-road program that will preserve the present political institutions, promote prosperity, and further well being of the working classes."

FACTORY ADMINISTRATION IN PRACTICE. By W. J. Hiscox. London: Sir Isaac Pitman and Sons, Ltd.—Formerly manufacturing establishments were run by trained mechanics without experience in, or a developed sense of, business administration, with the result that the work of production was not organized and administered as an efficient machine within itself, and with the further result that there was no proper correlation of production with the selling end of the business. How scientific factory management has in recent years overcome some of these defects in English factories is well told by the author of this volume who has had sixteen years of practical experience through close association with many well known manufacturing firms in England.

NON-PARTISAN LEAGUE. By Andrew A. Bruce, A.B., LL.B. New York: The Macmillan Company.—The author is Professor of Law in the University of Minnesota and was formerly Chief Justice of the Supreme Court of the State of North Dakota. This book is one of the titles making up the Citizens' Library Series edited by Professor Richard T. Ely. It is a careful study of that interesting experiment in the State's participation in industry which occurred in North Dakota. Considerable space in this book is given to a consideration of the legal aspects of the Non-Partisan League.

TRIUMPHANT PLUTOCRACY. By R. F. Pettigrew, former United States Senator from South Dakota. New York: The Academy Press.—This is a story of the author's public life from 1870 to 1920.

A NEW CONSTITUTION FOR A NEW AMERICA. By William MacDonald. New York: B. W. Huebsch, Inc.—The author, assuming that a convention were called for revising the Federal Constitution, proposes a Constitution which in his opinion would fit current needs. The book is interesting because it treats the whole problem of proposed changes in the Constitution as a unit. Though one disagree with the changes suggested by the author, still one can read the book to

his profit because the suggestions made throw the present constitutional system into bold relief by way of contrast and deepen one's understanding of it. They cause one to re-examine notions which from long continued familiarity need refreshing by a resurvey. The text of the Constitution with its amendments is printed.

RURAL COMMUNITY ORGANIZATION. By Augustus W. Hayes, Ph.D., Assistant Professor of Sociology, Tulane University, Louisiana. Chicago: University of Chicago Press.—This is a survey of present rural social units of organization with a view to disclosing their relative fitness as structures for the adequate expression of community life.

MAN, THE ANIMAL. By William Smallwood, Ph.D., Professor of Comparative Anatomy in Syracuse University. New York: The Macmillan Company.—The subjects discussed are the laws of the living protoplasm, the cell, nutrition, reproduction, heredity, disease, the law of sensation and the nervous system of man, and the problem of learning from a biological standpoint. This is a useful book with which to annotate one's knowledge of the subject by the elements of the recent developments in biological science.

MAROONED IN MOSCOW. By Marguerite E. Harrison. New York: Geo. H. Doran Company.—This well-written story of an unbiased American newspaper woman's observation and stirring experience in Russia from February to July in 1920 is perhaps the most readable on Russia so far published. The story of actual events at once catches the interest of the reader and sustains it throughout. Many will begin by reading the last chapter, into which the author has confined expressions of her own opinions, in order to see if the account of her investigation is seriously affected by the personal equation.

DANIEL BOONE AND THE WILDERNESS ROAD. By H. Addington Bruce. New York: The Macmillan Company.—The printing of the second edition of this fascinating story of America's adventurous migratory period gives opportunity to call it to the attention of those who have not read it, and to remind them that after they have read it they should not forget to take it home to their boys to read.

THE GREAT DECEPTION. By Samuel Colcord. New York: Boni & Liveright.—This book is an attempt to interpret the meaning of the popular vote in the last Presidential election with reference to what the country's attitude in international relations should be. The author concludes that we should have an international court backed by structures capable of enforcing its findings, such court being removed from the influence of politics which he thinks will affect the actions of the League of Nations. Pending the constitution of such a court, the author urges our entrance into the League of Nations for such a limited time only as is necessary to organize the non-political tribunal which he proposes.

WHAT WE WANT AND WHAT WE ARE. By W. A. Appleton, Secretary of the General Federation of Trade Unions in England. New York: Geo. H. Doran Co.—This little book contains a tempered statement of the position of the conservative leaders of the trade union movement in England. It points out five groups into which those active in the labor movement are divided, and the weaknesses of the position of the groups other than that of the author's. It states in some detail the specific objectives at which the conservative and responsible leaders in trade unionism are aiming. The

book is a reliable source of information since it contains the considered conclusions of one of the most outstanding figures in the English labor movement.

GENERAL PSYCHOLOGY IN TERMS OF BEHAVIOR. By Stevenson Smith, Ph.D., Professor of Psychology in the University of Washington, and Edwin R. Guthrie, Ph.D., Assistant Professor of Psychology in the University of Washington. New York: D. Appleton & Company.—Those whose academic training in Psychology occurred a decade or so ago and who are interested in the general subject of human behavior will welcome the opportunity which this book affords to find out something about the recent vital changes in academic thinking on psychological questions.

Current Law Journals

Dr. J. Murray Clark, K.C., M.A., LL.B., of Toronto, Can., is the author of a very interesting paper on the relations between the British Dominion of *Virginia and the Dominion of Canada*. This important historical study was made the subject of an address by Dr. Clark at Annapolis Royal, Nova Scotia, during the month of August last year. It has been printed in the January issue of the Virginia Law Register.

A very interesting review of a most interesting book is that by the Hon. Learned Hand on *"The Nature of the Judicial Process,"* by Mr. Justice Benjamin N. Cardozo, which review is printed in the February issue of the Harvard Law Review.

Mr. Justice Cuthbert Pound of the New York Court of Appeals is the author of one of the leading articles in the February issue of the Yale Law Journal, the title being "Some Recent Phases of the *Evolution of Case Law.*" He is also the author of an article in the February issue of the Columbia Law Review entitled "Nationals Without a Nation: The New York State Tribal Indians."

In the field of analytical jurisprudence falls a study by Professor George W. Goble printed in the February number of the Illinois Law Quarterly under the heading *"Affirmative and Negative Legal Relations."* The study attempts to answer some of the objections to the Hohfeldian system of legal analysis which have been suggested by Professor Albert Kocourek.

Mr. R. B. Gaither, Mexico City, Mexico, has an interesting statement of the *labor laws of the Republic of Mexico* which appears in the Virginia Law Review (February).

Professor Edwin W. Borchard points out in the February issue of the Illinois Law Quarterly what he conceives to be the elements of strength and weakness in the new *International Court*.

The law journals for February contain three important studies in the field of *Taxation*: "Income from Corporate Dividends," by Professor Thomas Reed Powell, Harvard Law Review; "Income Taxes on the Realization of Future Interests," by John M. Maguire of the Massachusetts Bar, Yale Law Journal; "Uncertainty of the Constitutionality of State Taxation of National Bank Stock," by Mr. Albert J. Schweppé, Minnesota Law Review.

William S. Holsworth of St. John's College, Oxford, is the author of a study of *English Corporation Law* during the Sixteenth and Seventeenth Centuries, which appears in the February issue of the Yale Law Journal. The problem of *corporate reorganization* is further discussed by Robert T. Swain of New York City in the Columbia Law Review for February. A

third study in the field of *Business Organization* found in the Journals for February is that by Professor Robert S. Stevens in the Cornell Law Quarterly on "Limited Liability in *Business Trusts.*"

Two interesting studies in the law of *Personal Property* are to be noted: "The Law of Accession of Personal Property," by Professor Earl C. Arnold, Columbia Law Review (February); "The Rights of a Pledgor on Transfers of a Pledge," by Professor James Lewis Parks, Minnesota Law Review (February).

An article on the law as to division and *partition fences*, prepared by Mr. William M. Rockel of Springfield, Ohio, is printed in the Central Law Journal of January 27th.

To what extent have we developed a doctrine of *Frustration* in the law of the *performance of contracts?* This timely question has been carefully discussed by William J. Conlen of the Philadelphia Bar in the January issue of the University of Pennsylvania Law Review.

Professor Francis B. Sayre is the author of a careful study of *Criminal Conspiracy* which appears in the Harvard Law Review for February. In the Cornell Law Quarterly for the same month Professor Fred S. Reese writes on the basic principles underlying the law of *negligence and proximate cause.*

Professor William R. Vance discusses the cases on the beneficiary's interest in a *life insurance* policy in the February issue of the Yale Law Journal.

An interesting study in the field of marketing is an article by Mr. Herbert A. Howell of the Copyright office, Washington, D. C., on the *"Print and Label Law."*

Two important contributions in the field of *practice and procedure* are an article by Professor Charles K. Burdick on "Service as a Requirement of Due Process in Action in Personam" (Michigan Law Review, February) and "How to Draft Findings of Fact and Conclusions of Law," by Judge Edgar V. Werner (Wisconsin Law Review, January).

Those interested in bar association activities and in the reform movement in Cleveland, Ohio, will welcome a reference to an article by A. V. Abernethy, Secretary of the *Cleveland Bar Association*, on the work of that Association, the first part of which article is printed in the Ohio Law Bulletin and Reporter of February 13th.

Memorials of Burke and Chatham

"The treasurer of the British Sulgrave Institution will before long present to America memorials of two British statesmen celebrated for their sympathy with the Americans in the grievances which led to the War of independence. A Statue of Burke is proposed for Washington and a bust of Chatham for the city which owes to him its name—Pittsburg. The Burke monument is to be a reproduction of the bronze statue by the late Mr. Havard Thomas, at Bristol. The work has been entrusted to Mr. G. Thomas, a son of the original sculptor. The Chatham bust is being executed by Mr. Reid Dick. Both monuments will be about 12 feet high, which means that the bust will be on a heroic scale.

"A gift is also expected to cross the Atlantic this year in the other direction. The American Sulgrave Institution has decided to present a bas-relief portrait of Mr. Choate to the benchers of the Middle Temple."—London Times.

UNIFORM STATE LAWS

Voluntary State Action Will Prevent Undue Centralization in Federal Government, Remove Uncertainties in Law and Delays in Administration, and Bring Legal Situation in Harmony With Results of National Social and Economic Development

By GEORGE B. YOUNG
Of the Montpelier, Vt., Bar.

THE original and unique feature of the United States Constitution is the dual sovereignty, with powers delegated to the Federal government, powers reserved to the states, and a system of limitations and checks whereby dual governments, each independent in its own sphere and within those spheres absolute over their common citizens, were created.

Of this constitution Viscount Bryce said:

The administrative, legislative and judicial functions for which the Federal Constitution provides are those relating to matters which must be deemed common to the whole nation either because all the parts of the nation are alike interested in them or because it is only by the nation as a whole that they can be satisfactorily undertaken. The chief of these common or national matters are war and peace; treaties and foreign relations generally, Army and navy. Federal courts of justice. Commerce, foreign and domestic. Currency. Copyright and patents. the post-office and post roads. Taxation for the foregoing purposes, and for the general support of the government. The protection of citizens against injustice or discriminating legislation by any state. This list includes the subjects upon which the national legislature has the right to legislate, the national executive to enforce the Federal laws and generally to act in defense of national interests, the national judiciary to adjudicate. All other legislation and administration is left to the several states, without power of interference by the Federal legislature or Federal executive.

While the last sentence of the above quotation is a little inaccurate, the statements of the quotation are substantially correct.

At the time the Federal Constitution was adopted communication and transportation between the states were slow, difficult, and dangerous. Trade and inter-state relations were extremely limited, and slight differences in local laws were consequently of little importance. The common law of England as it was about 1776 was then the fundamental law of all the colonies, being either expressly or impliedly adopted in all the states, but with some diversity due to colonial statutes and to some modifications of the common law thereby made. Concerning the common law as it existed in the colonies and later in the states, Franklin said:

The settlers of colonies in America did not carry with them the laws of the land as being bound by them wherever they should settle. They carried with them a right to such parts of the laws of the land as they should judge advantageous or useful to them; a right to be free from those they thought hurtful and a right to make such others as they should think necessary, not infringing the general rights of Englishmen; and such new laws they were to form as agreeable as might be to the laws of England.

After the adoption of the Constitution the legislation of the different states and the decisions of the courts gradually developed substantial differences in the law.

Few lawyers will deny the advantages of uniform laws concerning trade and commerce between the states, contracts between citizens of different states, and other interstate relations.

A committee of the American Bar Association in 1891 said:

The business man may well ask: Why should not the meaning and effect of a promissory note, a bill of lading, or a guarantee be as certain and definite and practically identical in all the states as the meaning of words in an American dictionary, and for the same reason, the common convenience of all. Obviously the vast volume of inter-state trade and commerce and business dealings of all kinds, growing in range and complexity to enormous proportions, is entitled to the protection and advantage of substantially uniform laws.

Now a state which unites with other states in promoting such general and uniform laws in matters affecting the common interests of all the states and in the spirit of mutual compromise through mutual commissions and investigations yields in so doing nothing whatever of its state sovereignty. On the contrary, the proposed method of voluntary state action takes from the general government any excuse for absorbing powers now confined to the states and therefore directly tends to preserve intact the independence of the states.

In no previous equal period of the world's history has there been such tremendous progress in science, industry, transportation, and means of communication as there has been since the adoption of the United States Constitution. In no equal period has a nation so grown and prospered and developed, improved, and populated such an extensive territory, with all its parts so closely knit together by trade, commerce, and social intercourse. Much of this development is due to the form of government which has existed in this country and the individual freedom of action thereby guaranteed. This growth of the country, these increasing facilities for communication, trade, and travel between the states, and the increased intercourse between citizens of different states have made very apparent the disadvantages arising from a lack of uniformity in laws on those subjects not within the scope of the Federal Government but at the same time entering into the relations between citizens of different states and into the trade and commerce of the country. These disadvantages have developed a growing demand for uniformity which must be met either by the states or through the Federal Government. *If our present system of government is to be maintained, this demand must be met by uniform statutes in the different states.* If not so met, then the Federal Government will gradually assume jurisdiction over these matters, and the powers of the states over certain subjects of municipal law, originally reserved to the states, will be lost to them, and a long step toward centralization will have been taken.

The great majority of the bar, of our statesmen, and of the people believe that the present constitutional form of government should be maintained, that the powers of the states should be preserved, and that those powers reserved to the states should not be taken away by the Federal Government. In other words,

they are opposed to the centralization of power in the Federal Government at the expense of the states.

The American Bar Association was founded in 1878, and at that time the lack of uniformity in state laws had become so serious that in the constitution of the Association it was declared:

Its object shall be to advance the science of jurisprudence, promote the administration of justice and uniformity of legislation and of judicial decision throughout the nation.

In December, 1881, the Alabama State Bar Association created a committee to correspond with officers and committees of other bar associations to cause concerted action looking to uniform state legislation as to questions of national importance, principal among which were conveyance of land, attestation of wills, marriage and divorce, and negotiable instruments.

In 1888 an act was introduced in the New York legislature for the creation of a board of commissioners to confer with like commissioners to be appointed by the other states for the promotion of uniformity of legislation in the United States.

In 1889 the American Bar Association passed a resolution recommending the creation of a commission on uniformity of state laws.

It was as the outgrowth of the action in New York, which took the form of a law on the 28th of April, 1890, stimulated by the action of the American Bar Association, that the National Conference of Commissioners on Uniform State Laws came into being.

In 1891 a committee of the American Bar Association reported in favor of uniformity of legislation on the following subjects: marriage, divorce, jurisdiction in divorce cases, residence in same, descent, distribution, wills, probate, insolvency, notarial certificates, commercial paper, acknowledgment of deeds. In this report the committee said:

The annoyances arising from variant and conflicting laws seem common to all the states, *viz.*: perplexity, uncertainty, confusion, with consequent waste; a tendency to hinder freedom of trade, and to occasion unnecessary insecurity in contracts, resulting in needless litigation and miscarriage of justice. As the answer of Mr. Colby of New Hampshire tersely puts it, "The continuing diversity of the laws of the various states and territories on the subjects in question causes constant and gross waste of capital by suitors and of skilled labor by bench and bar; occasions long delays, which are substantial denials of justice; facilitates various admitted immoralities, and issues in uncertainty of law, which Burke aptly describes as the 'essence of tyranny.'

Every lawyer whose practice causes him to study the laws of different states is only too well aware of the diversity in state laws on various subjects which enter into the relations between the citizens of different states, and it is beyond the limits of this article to attempt to point out those discrepancies. They are too numerous and too extensive to tabulate here.

The committee further said:

Your committee regard the commissions on uniformity and the objects set to be secured through them as of the first importance and worthy of the hearty support of the people of the country and therefore recommend as the most practical and effective cooperation on the part of the American Bar Association a re-affirmance in effect of last year's action in furtherance of the creation of new commissions together with such additional incentives for renewed and united efforts, not only in increasing the number of the commissions but in aiding them in obtaining uniform laws by legislation, as may be formulated by the members of the Association present at its annual meeting.

Frank J. Stimson in the American Academy of Political and Social Science in 1895, speaking of the

National Conference of Commissioners on Uniform State Laws, said:

This National Conference then recommends forms of uniform statutes which each state commission, returning, presents to the governor or the legislature of its own state for enactment. *The method is a simple one; but the movement—if successful in any degree—would be the most important juristic work undertaken in the United States since the adoption of the Federal Constitution.*

In the more than one hundred years that have elapsed since that time there has been no official effort to obtain greater harmony of law among the states of the Union; and it is the first time since the debates on the Constitution that accredited representatives of the several states have met together to discuss any legal question from a national point of view.

Lyman D. Brewster of Connecticut, in an address before the American Bar Association some years ago, said:

Trade and commerce, education and enterprise fuse the whole country in common interests that need the kindly guardianship of uniform laws. Custom is a powerful element in the formation and interpretation of the law, and custom from one end of the country to the other is plainly growing more and more uniform. The strong tendency toward urban life, the centralization and consolidation of all the methods of interstate commerce and business intercourse of every kind, the common use of new inventions, and the adoption of common fashions all unite to wipe away the provincial differences of former days.

On the other hand the fecundity of legislation, constantly creating new differences—the fact that many states have already adopted separate codes, perpetuating local differences—and the fact that the courts of last resort, in the larger states, now rarely cite decisions from the other states as they did a generation ago, all tend to prevent that approach to unity which the existence of the common law might be supposed to foster.

The general recognition of the importance of this movement is evidenced by the statutes creating commissions to promote uniformity of state laws. The National Conference of Commissioners on Uniform State Laws is now composed of commissioners from each of the states, the District of Columbia, Alaska, Hawaii, Porto Rico, and the Philippine Islands. In thirty-three of these jurisdictions the commissioners are appointed by the chief executive under express legislative authority. In the other jurisdictions the appointments are made under general executive authority.

The object of the National Conference, as stated in its constitution, is to promote uniformity in state laws on all subjects where uniformity is deemed desirable and practicable.

In the first meeting in August, 1892, at Saratoga, nine states were represented, but in recent conferences all the states, territories, the District of Columbia, Porto Rico, and the Philippine Islands have been officially represented.

There can be little difference of opinion as to the advantage of uniformity of state laws on the following subjects: acknowledgments, bills of lading, conditional sales, fraudulent conveyances, land registration, partnership, negotiable instruments, sales, stock transfers, warehouse receipts, and wills. There is believed to be a need—though perhaps less urgent—for uniformity on the following subjects: child labor, cold storage, depositions, desertion and non-support, extradition of persons of unsound mind, extradition of persons charged with crime, marriage and divorce, occupational diseases, proof of statutes, vital statistics, incorporation, securing compulsory attendance of non-resident witnesses in civil and criminal cases, mortgages, and chattel mortgages. The benefits of uniform divorce laws are apparent but divorce is so closely related to local

conditions and feelings that uniformity on this subject is, I believe, practically impossible.

The National Conference has drafted and approved thirty-four acts. It has also approved seven acts drafted by other organizations. Baker, Voorhis & Company of New York have published a volume, "Uniform State Laws, Annotated," edited by Charles Thaddeus Terry of New York, at one time Secretary and later President of the Conference, which is an excellent treatise on the subject. The movement has made much progress and has very real achievements to its credit. Acts approved by the Conference have become law by 291 enactments by the legislatures of the states.

Acts approved by the Conference prior to 1910 have been enacted as follows: the Acknowledgment Act in 10 jurisdictions; Bills of Lading Act in 25, Negotiable Instruments Act in 51, Sales Act in 25, Stock Transfer Act in 15, Warehouse Receipts Act in 48.

Of the acts approved since 1910 the Foreign Acknowledgments Act has become law in 6 jurisdictions, Desertion and Non-Support Act in 12, Fraudulent Conveyance Act in 11, Land Registration Act in 3, Limited Partnership Act in 11, Partnership Act in 13, Wills Executed in Foreign Jurisdictions Act in 7,

Wills Probated in Foreign Jurisdictions Act in 4, Conditional Sales Act in 7, and other acts in a less number.

The National Conference now has under consideration proposed uniform acts on incorporation, compacts and agreements between states, securing compulsory attendance of non-resident witnesses in civil and criminal cases, declaratory judgments, tribunal for settling industrial disputes, aviation, mortgages, chattel mortgages, extradition of persons charged with crime, arbitration, and some other subjects.

The importance of uniformity of state laws is much greater than it appears to many lawyers who have given the subject little consideration. Business interests rightfully demand it. Many business organizations do business in many states. *The perplexity, uncertainty, confusion, and waste resulting from variant laws in these different states hinder freedom of trade and constitute a serious burden on business between the states. Unless the states themselves remedy this defect, the Federal Government will. The resulting centralization of power would be unfortunate and detrimental to the fundamental principles of our form of constitutional government and to the independence of the states.*

The interest of the Bar Association in this subject should be revived, and its entire membership should take an active part in aiding the National Conference.

Proposed Amendment to By-Laws

Recommendation to the Executive Committee that By-Law VII be amended by striking out the last paragraph thereof and substituting for it the following:

The Committee on Professional Ethics and Grievances shall:

(1) Assist State and Local Bar Associations in all matters concerning their activities in respect to the ethics of the profession and grievances against members of the Bar, collect and communicate to the Association information concerning such activities and, from time to time, make recommendations on the subject to the Association.

(2) Construe and answer questions concerning the application of the Canons of Ethics when consulted by officers or committees of State or Local bar associations respecting questions of proper professional conduct, reporting its action in that respect to the Executive Committee from time to time.

(3) Receive and hear all complaints preferred against any member of this Association for professional misconduct and may investigate such misconduct of a member of this Association of which no formal complaint has been made. As a result of such hearing or investigation it may recommend to the Executive Committee the forfeiture of the right to membership of any member of this Association. All such recommendations to the Executive Committee or forfeiture of membership shall be accompanied by a transcript of the evidence considered by it and shall only be made after the accused member has been given notice of the nature of the complaint or investigation and after a reasonable opportunity has been accorded him or her

to submit written evidence and written argument in defense. The conclusions of the Committee may be attained and become effective without a meeting of the Committee, but if a hearing or meeting be held by the Committee the accused member shall have the right to make defense therat or to be present or represented during the taking of testimony respecting the alleged misconduct.

(4) Forfeiture of the membership of any member as hereinbefore provided shall become effective when approved by a majority of all of the members of the Executive Committee and all interest in the property of the Association of persons whose membership is so forfeited shall *ipso facto* vest in the Association.

(5) Whenever specific charges of unprofessional conduct shall be made against a member of the Bar not a member of this Association, and the Chairman of the Committee on Professional Ethics and Grievances is of the opinion that the case is such as requires investigation or prosecution in the courts, the same shall be referred by the Chairman to the appropriate State or Local Bar Association where such attorney resides and it shall be the duty of the Chairman, in co-operation with the local Vice-President of this Association for the State where such attorney resides, to urge the appropriate officers or committees of State or Local bar associations to institute inquiry into the merits of the complaint, and to take such action thereon as may be appropriate, with a view to the vindication of lawyers unjustly accused, and the discipline by the appropriate tribunal of lawyers guilty of unprofessional conduct.

(6) The Committee, with the approval of the Executive Committee, shall formulate rules not inconsistent with this by-law to give effect to the foregoing provisions, which rules shall be published in the annual reports of the Association.

Legal Aspects of Foreign Trade

By A. J. WOLFE

Chief, Division of Commercial Laws, Bureau of Foreign & Domestic Commerce, Department of Commerce, Washington

ON March 3 a preliminary conference on arbitration was held in the office of James B. Stafford, assistant to Secretary Hoover, at which were present Mr. Charles L. Bernheimer, Chairman of the Arbitration Committee of the Chamber of Commerce of the State of New York, Mr. C. D. Snow, manager of the foreign Department of the Chamber of Commerce of U. S. A., and several economists who have made a study of the subject in commercial arbitration. Plans were laid for a conference to be held in New York on April 14, with the attendance of numerous executives of trade bodies which have realized the vast importance of commercial arbitration as an auxiliary of orderly conduct of business between merchants residing under two or more varying jurisdictions. The draft of a federal bill on arbitration prepared by Mr. Julius Cohen for the Committee on Commerce, Trade and Commercial Law of the American Bar Association was discussed and commended. The object of this bill is to make valid and enforceable written provisions or submissions for arbitration of disputes arising out of contracts, maritime transactions or commerce among the states or territories or with foreign nations. The hope was expressed that in the conclusion of treaties with foreign countries due provision would be made for the reciprocal recognition of the validity of voluntary arbitration agreements in commercial contracts. The Division of Commercial Law in the meanwhile is receiving answers to questionnaires sent to the informants of the Department of Commerce in foreign countries for the purpose of ascertaining the existing facilities for the arbitration of commercial disputes, the attitude of the law and of the courts to the subject of commercial arbitration in various countries and the success attending the movement. A number of trade organizations throughout the United States, particularly in the food products and in the lumber trade, have already installed arbitration systems for their own membership, and there is a distinct and growing tendency in this direction noticeable in many trade bodies capable of defining usage and of enforcing rulings among their members.

The Hague Rules, 1921, drawn up by the Maritime Law Committee of the International Law Association at The Hague in September, 1921, define the liability of cargo carriers. The rules have met with a very cordial reception on the part of a number of commercial organizations in the United Kingdom and in the United States. There has also been some spirited opposition on the part of certain interests in both countries, chiefly shippers of bulk cargoes in England and meat packers in the United States. The Hague Rules represent a compromise apparently suitable to the greater portion of the interests concerned. Their chief claim for approbation rests upon the possibility of quickly uniting upon them. The need of uniformity in the interpretation of the liability of cargo carriers is universally admitted. It would benefit the shipper who need not fear some iniquitous "joker" hidden in an obscure part of an illegible Bill of Lading; it would benefit the

banker who, under The Hague Rules, finds in the Bill of Lading an instrument of positive tenor rather than a source of possible complications; it would benefit the underwriter because with the liability of the cargo carrier once for all determined the underwriter can adjust his premium to known risks. The arguments in favor and against The Hague Rules are discussed in *Commerce Reports* by the Division of Commercial Laws and copies will be sent to any member of the Bar upon application. The champion of The Hague Rules is Mr. Charles S. Haight, Chairman Bill of Lading Committee, International Chamber of Commerce, 27 William Street, New York, while a very elaborate presentation of objections to The Hague Rules has been prepared by and may be obtained from the Institute of American Meat Packers. With the latter organization supporting the MacKellar Bill, the Interstate Commerce Commission bringing out its own Through Export Bill of Lading form for railway-ocean shipments, and a number of trade bodies actively championing the adoption of The Hague Rules, a lively time may be expected before the much-desired accord in this essential factor of foreign trade will be attained.

The situation in Cuba has steadily grown in tension. Credits of American shippers to the tune of many millions are tied up in goods warehoused in Cuba and not accepted or paid for by Cuban consignees. Other millions are in jeopardy because of the incredibly confused state of shipments in warehouses, making it impossible to trace what has been delivered to customers, what is the ownership of individual lots of stored merchandise or what has been lost, stolen and dissipated. Some creditors had formed a committee which has been camping in Havana for months without results. When the Cuban government threatened to sell the goods at auction in order to raise revenue, the Department of Commerce and State protested and the threat was not carried out. The American Board of Marine Underwriters sent some representatives to Havana to attempt to take an inventory of goods still in warehouses. In the early part of March the Cuban Government granted permission for this inventory to be taken. The advice of observers on the spot is to ask the Cuban Government for the appointment of a special term of court to deal with the numerous disputes. The Division of Commercial Laws has prepared a memorandum dealing with the situation and suggesting that this nasty mess can be cleared up only by the joint action of the best elements in the two mercantile communities leading to the setting up of arbitration boards, if a law could be passed giving to their judgments the validity of the judgments of the highest Cuban court. The arbitration boards to pass upon briefs submitted by both parties and relying upon commercial equity rather than upon the strict letter of the law.

Should this method prove feasible and successful, there is a further field for its application in Colombia and Argentina. Many legal advisers of American corporations, finding themselves face to face with an impasse, endorse this solution of a vexatious problem. The situation in Cuba is complicated by the existence of a certain class of unscrupulous traders in that section of the world, alien both to Cuba and to America, who have thrived upon the unsound conditions resulting from the shock to the commercial organism of the collapse of high prices and excessive sales.

ACTIVITIES OF STATE BAR ASSOCIATIONS

Secretaries of State Bar Associations are requested to send in news of their organizations. "News" means not only official statements of time, place and programs of regular meetings and the action there taken, but also reports of other interesting activities. In brief, anything showing what the membership, committees and leaders in the State Bar Association are thinking and doing with respect to matters of professional interest.

Secretaries can help to make this department one of the most interesting in the Journal. The collection of reports will enable each State Bar Association to see every month what the others are doing and to avail itself of any suggestion contained in their activities. Contributions should be mailed not later than the 25th of each month and should be addressed to the editorial office, 1612 First National Bank Building, Chicago.

CONNECTICUT

Annual Meeting Held in New Haven

At the annual meeting of the State Bar Association of Connecticut held in New Haven in Hendrie Hall, Yale Law School, January 30, President A. Heaton Robertson delivered the annual address. Other addresses were delivered by Reginald Heber Smith of Boston on "Justice and the Poor"; George E. Beers of New Haven on "Appellate Procedure in Connecticut"; and by James Roland Angell, LL.D., President of Yale University, Hon. J. E. Keeler of the Superior Court, and Prof. Joseph H. Beale of the Harvard Law School.

Reports of committees were heard and the following officers were elected for the ensuing year: William B. Boardman of Bridgeport, President; Lucius F. Robinson of Hartford, Vice-President; James E. Wheeler of New Haven, Secretary and Treasurer.

The report of George E. Beers of New Haven, a delegate to the Conference of Bar Associations held at Cincinnati last summer, was received and placed on file. William B. Boardman, the newly elected president, Dean Thomas W. Swan of the Yale Law School, and George E. Beers of New Haven were appointed delegates to the educational conference at Washington.

IDAHO

Meeting Time May Be Changed to Summer Month

It has been the custom of the Idaho State Bar Association to hold biennial meetings at Boise, the Capital, during the legislative sessions on the theory that larger attendance would result, and that any proposed legislation could be presented to the Legislature for action. It has appeared, however, that many members could not then attend on account of activity in the courts, and that proposed legislation was often presented too late to secure proper consideration and action by the law-making body. The executive committee has, therefore, sent to each member and prospective members a suggestion for meetings during summer vacation months at a convenient summer resort, and requested an expression of opinion. If favored, the next meeting of the association will doubtless be held during the summer of 1922 in place of January, 1923, the customary time.

SAM S. GRIFFIN.

KANSAS

Plan to Bring Work of State Association Home to Entire Bar

A meeting of the Executive Council of the Kansas State Bar Association was held in Wichita, Kansas,

on February 17, at which time several matters of considerable importance to the association were taken up.

The first question under discussion was how to bring the work of the State Bar Association home to the individual members of the bar of the state, who were unable to attend the State Conventions, or take part in the proceedings of the association. It was felt that this could be accomplished if the local bar association was brought into more direct contact with the State Association, and in order to effectuate this purpose, the following resolution was adopted:

Each local bar association in the state shall be entitled to send to the next meeting of this Association at Salina one representative for every twenty-five members, or fractional part thereof in such local association. Such representative shall be elected by the members of the local association or in case of failure to elect, the President of such local bar association may appoint such representative. Such representative shall be a member of this association or shall become a member before acting as representative. Nothing herein shall be construed as discouraging the attendance or abridging or limiting the rights or privileges of individual members of the association.

The second question which came up for discussion was the question of membership, and considerable discussion arose over how an increase could best be brought about. A plan very similar to that adopted by the American Bar Association was discussed, and the following resolution adopted:

The President is hereby directed to appoint a Membership Committee composed of one member from each judicial district, to have charge of the membership work in his district, to be known as District Director and each of the District Directors shall appoint a member of our association in each county in his district, who shall be County Adviser.

It is hoped that the means here adopted will give the Secretary and President of the State Association more intimate and direct relationship with the individual members of the bar in every district and county, and thus bring about an increase which could be secured in no other way.

The meeting of the association was set for Salina, Kansas, November 27 and 28.

LOUISIANA

Next Annual Meeting To Be Held At Monroe

The executive committee of the Louisiana Bar Association at its meeting in New Orleans February 11 decided on Monroe as the place for the next annual convention of the association to be held May 5 and 6. President J. Zach Spearing and Secretary W. W. Young are now selecting the members of the committee in charge of the arrangements.

NEW YORK

Frederick E. Wadham Resigns as Secretary of State Association

Frederick E. Wadham of Albany, N. Y., presented on March 1st his resignation as Secretary of the New York State Bar Association. Mr. Wadham was elected Secretary of the New York State organization in 1899 and his successful administration of the office for nearly a quarter of a century is now part of the history of the bar of New York. He is one of the pioneers in bar organization and was indefatigable in his efforts to build up what has become the largest state bar association in the country. During his term of office he helped to make notable and successful the administration as President of such distinguished members of the New York bar as Francis M. Finch, William B. Hornblower, John G. Milburn, Richard L. Hand, Joseph H. Choate, Francis Lynde Stetson, Adelbert Moot, Elihu Root, William Nottingham, Alton B. Parker, Alphonso T. Clearwater, Morgan J. O'Brien, Charles E. Hughes, Henry W. Taft, Nathan L. Miller and William D. Guthrie.

Mr. Wadham is known from coast to coast as the Treasurer of the American Bar Association and is also Chairman of its Membership Committee.

In presenting his resignation as Secretary of the New York State Bar Association, Mr. Wadham stated that the extraordinary growth of the American Bar Association in the past few years and the demands upon him incident to the Chairmanship of its Membership Committee have so greatly increased the burden of his duties as to preclude a continuance of his service as an officer of the New York State Bar Association.

Mr. Wadham will be succeeded by Honorable Charles W. Walton, formerly of Kingston and now of Albany, a member of the present Senate of the State of New York.

OKLAHOMA

Plans for Amendment of Judiciary Provisions of Constitution

The annual meeting of the Oklahoma State Bar Association was held at Oklahoma City, Oklahoma, December 29th and 30th, inclusive, 1921.

The Annual Address was given by Honorable W. L. Freierman, ex-Solicitor General of the United States, upon the subject of "Peace and Disarmament," an address which was universally considered a very scholarly one and which commanded an enthusiastic reception from the entire association. Two other regularly programmed addresses before the association were of exceptional merit, one being on the subject of "Juvenile Punishment and Reform," given by Judge Enloe B. Verner of Muskogee, and the other on the subject of "Probate Sales" by Russell G. Lowe of Oklahoma City.

For three years past the Oklahoma State Bar Association has been giving a great deal of attention to the question of court and remedial reform, and a Special Legislative Committee has been considering this matter from year to year. Its report a year ago recommended a constitutional amendment by way of a new article on the Judiciary containing a complete scheme for a unified court for the state of Oklahoma. The matter was not acted upon definitely by the association but was referred to another standing committee for an additional year's study, and its report at the session just closed aroused a great deal of interest.

The committee this year did not make a definite recommendation but pointed out the alternatives and left to the association the matter of expressing its preference. The alternatives suggested dealt primarily with relief of the Supreme Court docket which is now about three years behind and falling back further each year. One plan was to procure the appointment of temporary commissioners to help with this appellate work; another plan was the establishment of intermediate courts of appeal. The third plan was to provide authority for the Supreme Court, which already consists of nine members, to sit in divisions of three in ordinary cases with provisions for consideration by the court *en banc* in certain important matters, with further provision made for the addition of other divisions if necessary, and with a directing Chief Justice of the state who should be charged primarily with the administration of the judicial department.

Again the association referred the matter to the committee, augmented by four new appointees, thus making a committee of nine, with instructions to suggest a definite plan or plans of amendment to the constitution for a revision of the judicial system so as to afford both immediate and permanent relief from the present congested condition of the court dockets, and further, that such plan or plans, when finally agreed upon by the committee, be printed at the expense of the association and mailed to every member in ample time for final and complete consideration by the association at its next meeting. It was provided that the members of the committee living outside of Oklahoma City should have their expenses paid by the association for the purpose of attendance upon such committee for a time sufficient to do its work thoroughly.

The report of this augmented standing committee upon Court and Remedial Reform will, no doubt, occupy a very prominent place upon the program next year and will doubtless lead to some definite action being taken by the association toward procuring legislative enactments looking toward the reorganization of the courts of Oklahoma and some greatly desired reforms in procedure.

W. A. LYBRAND, Secy.

Constitution for Palestine

"The draft Constitution of Palestine, which has been communicated by the Government to the Arab delegation now in London and to the Zionists, has been completed only after prolonged discussion between his Majesty's Government and the parties concerned, and will, it is hoped, form a possible basis for a reasonable agreement.

"There has been no question of going back upon the Balfour Declaration. The point the Government has had in view has been to ascertain what precisely was to be apprehended as a result of the carrying out of its policy, and, having ascertained this, to draw up a scheme that would provide the necessary safeguards.

"The main point of the Government scheme is that while the Executive will remain in the hands of the High Commissioner for Palestine, there will be a Legislative Council, partly nominated and partly elected, so that the necessary constitutional safeguards will be provided. The High Commissioner will have power to reserve certain matters for the decision of the Secretary of State, but the Constitution as drafted is really a first step in the direction of representative government."—London Times.

LETTERS FROM BAR ASSOCIATION MEMBERS

Dean Stone's Rejoinder to Mr. Reed's Reply

New York City, Feb. 28.—*To the Editor:* I have read with the greatest interest and appreciation the statement of Mr. Alfred Z. Reed, author of the recent Carnegie Foundation report on legal education, appearing in the February number of the JOURNAL in which he comments on my criticism of the Carnegie report published in the December number.

If in fact I am mistaken, as he asserts, in my interpretation of the Carnegie report as not favoring any substantial raising of standards for admission to the bar, no one will be more gratified than I that this interpretation is an erroneous one. For it is of great importance at this juncture that a study of legal education put forth by the Carnegie Foundation should exhibit some real enthusiasm for raising standards for admission to the bar in this country, but it would be relatively unimportant if I should be found not to be impeccable in my failure to discern in the report any evidence of such enthusiasm or any recommendation that standards of bar admission should be raised.

In my original article I was at some pains to point out that "impliedly but not explicitly the assumption is made (by the report) that we have reached the point beyond which it is not safe to go in raising standards." This implication appeared to me to follow from Mr. Reed's emphasis on the necessity of a democratic bar and on the necessity of keeping the bar "within reach of the great bulk of the population" and from the fact that I have been unable to find in his report any statement which in my judgment can fairly be construed as indicating that the author thinks that standards ought to be raised in any substantial way.

As the sole evidence of my "inaccuracy" in this respect Mr. Reed culls from the 498 pages of the report a single sentence reading as follows:

Even under the handicap of this tradition (the unitary bar), however, something can be done at once to tone up statutes and rules of court, both for the purpose of assisting conscientious law teachers in the better schools of each type, and for the purpose of introducing into the training of lawyers valuable elements that the schools themselves cannot provide.

Although I am still doubtful as to the meaning of this sentence, I confess that, until I had read Mr. Reed's statement, it had not occurred to me that by this phraseology he was advocating a *raising* of standards of admission to the bar or even that it was a recognition that standards might be raised consistently with his democratic theory of the bar. The language quoted suggests changes in the rules of admission but it is as consistent with a program for lowering standards as it is with a program for raising them. One would certainly need to know what the "valuable elements" are which may be introduced and which the schools cannot provide, before accepting them as raising standards. The suggestion of changes which are to assist "conscientious" teachers in the better schools but do nothing for the teachers, conscientious or otherwise, in the poorer schools would seem to be nothing more than an elaboration of the "adjusted bar examination" for which ingenious device I gave Mr. Reed full credit in my original criticism of his report. If Mr. Reed regards legislation which is to aid the teacher in the good

school but is silent with respect to the teacher in the poor school as a procedure for raising "standards," then he is using the term in a different sense from that in which I have used it for I can see in the "adjusted" bar examination only a device which in practice would become a cloak for evading any raising of standards where the need is greatest.

Now that Mr. Reed has made it entirely plain that his report is not to be taken as in "opposition" to raising standards for admission to the bar, he would render a service if he would point out any parts of the report, if such there be, which favor any raising of standards which would operate to exclude from the bar any of the graduates of those schools which according to his report "are doing more harm than good," but who are admitted to the bar by present standards, or which would operate to remove the deficiencies of those schools. Otherwise other readers of the report will be in danger of falling into the error with which he charges me of inferring from a reading of the report that the author of it apparently believes "that such schools can be induced to remove their own deficiencies by the mere force of moral suasion."

Mr. Reed takes exception to my reference to his assertion that admission to the bar must be kept "within reach of the great bulk of the population" as an assumption and, judging by his statement, he appears to believe that he demonstrates the truth of that proposition by showing first that the lawyers discharge a political function, which my criticism concedes, and second by arguing that a political function "cannot be allowed to become the monopoly of a favored class," with which I also agree if by "favored class" is meant a social or economic class. Lawyers in a jurisdiction, where there are required bar examinations, are a favored class in that they are preferred over those who are unable to pass these examinations and they enjoy a monopoly of the political function of practicing law. I believe in such a favored class and in such a monopoly, provided it be selected on the basis of the qualifications of its members to perform the services of lawyers. I assume Mr. Reed shares in my belief since he now states unqualifiedly that he is not opposed to raising standards, which I believe I am justified in assuming would make it more difficult for candidates to secure membership in this favored class.

It had not occurred to me, therefore, before I read Mr. Reed's statement that he regarded his suggestions anent a favored class and monopoly as any part of a demonstration of his main proposition that "admission to the bar must be kept within reach of the great bulk of the population." That proposition seemed and still seems to me to be a broad assumption if words are taken at their face value. It is one thing to keep the bar from becoming a monopoly of some favored social or economic class. It is quite another and different thing to keep admission to the bar "within reach of the great bulk of the population" for, as I tried to point out with some particularity in my criticism of the original report, the present requirements for admission to the bar place it beyond "the reach of the great bulk of the population," who have neither the intellectual attainments nor the willingness to make the needed sacrifice.

We may perhaps assume that Mr. Reed would agree that these existing requirements do not even tend

to make lawyers a favored social or economic class or a monopoly of such a class, which I think must be taken to be the sense in which he used those terms in his report since, as now appears, he is not opposed to raising those requirements. But just how Mr. Reed can maintain his thesis that "the bar must be kept open to the great bulk of the population" and at the same time favor raising of bar examination standards is not entirely clear. The two positions seem to me to be irreconcilable and it was because I regarded the first one, for reasons already stated, as the fundamental dogma of his report that I found it impossible in the absence of any unqualified statement to that effect to regard the report as favoring any material raising of standards. Hence I must repeat the statement selected—but inaccurately quoted—by Mr. Reed from my original article for especial criticism, but with the addition of two sentences which he omitted:

That the lawyer's function is in a certain sense political we do not question. This is due not so much to the fact that legislators, administrative officers and judges are drawn largely from the lawyer class, as to the circumstance that the development of unwritten law is profoundly influenced by the researches and arguments of counsel and that private individuals cannot secure justice, which it is the function of government to give, without the aid of a special professional order to represent and advise them. But that a democracy should leave the performance of this function open to the great bulk of the people without a serious effort to limit the membership of the profession to those who are fitted for the performance of that function is a proposition to which assent will not so readily be given. (p. 640).

And finally Mr. Reed is aggrieved because my criticism of his report "implies that the Root Committee after having had the views of the author of the Bulletin presented to it in person, repudiated them when as a matter of fact precisely the reverse is true," and we are also told by Mr. Reed that the Root report shows "entire sympathy with such views as the author thought worth presenting in person," which rather suggests that whatever these views were he had not found them worth presenting in his report.

My exact words were (p. 641) "the recommendations of the (American Bar Association) Committee were made not only after a study of the present report but after it had had the benefit of the views of the author of the report presented in person at a hearing of the Committee in New York City. In view of the opposite conclusion reached in this report from those reached by the Committee . . ."

I do not know what views Mr. Reed addressed to the Committee in person, as I was not present on that occasion, but I naturally assumed that they were consistent with his report which I understand was then before the Committee although it had not then been given to the public. If Mr. Reed's views personally expressed were inconsistent with those parts of his report which I have thought proper to criticise, then I can only say that I cordially agree with those views so far as they have found expression in the report of the Root Committee.

For myself and in behalf of those readers who like myself must endeavor to ascertain Mr. Reed's views from the printed documents, I can only reiterate my expression of regret that some positive and effective support for the specific recommendations of the Root Committee for raising requirements for admission to the bar is not to be found in Mr. Reed's report as published.

Now that the Conference of Bar Associations at its Washington meeting has adopted the recommenda-

tions of the Root Committee, perhaps a future Bulletin of the Carnegie Foundation, which I hope will not be long delayed, will make its position with respect to these important matters less confused than it now appears to be.

HARLAN F. STONE.

New York City.

The Late Lord Bryce

Pittsburgh, Pa., March 1.—To the Editor: The admirable article on the late Lord Bryce, in the February number of the JOURNAL, leads me to communicate the following data concerning this eminent man, who was known to many members of the Association.

In 1896, while the guest of Lord Bryce, in his London house, at breakfast, the subject of "The American Commonwealth" came up, and I asked him how he came to write the volumes. "One night," he replied, "Mr. Gladstone accosted me in the lobby of the House—I was then a member for Oxford University—and inquired where he might find some information he desired concerning the 'States.' I replied that there was no book, so far as I knew, which gave the information he desired. Said he, 'Professor Bryce, if you do not write such a book, I shall.'" Lady Bryce here spoke and remarked that she believed Mr. Gladstone's inquiry was not precisely the original step toward the volumes, as their author had for some years had the subject in mind. However, I give the incident as it occurred. Critical readers of "The American Commonwealth" know that the major premise of the work is the superiority of the "Cabinet" system of government over the "Committee" system—that is, of the British over the American system. The work was written to inform Englishmen concerning American institutions—not as a primer for Americans. "We were astounded by its reception in America," continued Lady Bryce.

At the time of this conversation Bryce was President of the Board of Trade in Gladstone's Cabinet. I recall that I sought for his photograph in the London shops but without success. Seemingly he had not at that time gained the fame now associated with his name.

During the war I was in correspondence with Lord Bryce's close friend, Trevelyan, and learned from him that my letters were read by Bryce "with satisfaction." During Bryce's ambassadorship in America I had occasional letters, chiefly in recognition of receipt of some book or pamphlet, but not containing matter worthy of special note. But in May, 1918, I received from Lord Bryce a consignment of copies of his famous "Report" on German atrocities, together with a letter, from which I quote:

You may be interested to know that all of the Committee—so far as I recollect—and I certainly entered on this enquiry with minds very sceptical as to these outrages; and it was only as the evidence went on accumulating that we were convinced that the facts were as the Report described. We had thought it scarcely possible that Germans would be so inhuman. Before any statement was admitted into the Report, I used to put the question round, "Does anybody doubt?" and whatever any member doubted was not admitted. It is the entrance of the U. S. army that will turn the scale in this conflict.

A few days ago, Trevelyan wrote me:

I knew that you would feel Bryce's death much. I received a beautiful letter with an account of it. He had gone with Lady Bryce to Sidmouth, to get a fortnight's quiet for a piece of undisturbed work. On the Saturday, at the end of that time, he was as well as well could be. He worked easily and happily through

the day taking a walk above the town, and talking with his wife in high animation about his travels in Troy and Ithaca. He went to bed perfectly well, and very cheerful; and he never woke again, and was found in peace, with no sign of pain, stress, or struggle.

" O beate Sesti,

Vitae summa brevis spem nos vetat inchoare longam."

Or, shall there not be written,—

"His body is buried in peace,
But his name liveth evermore."

Univ. of Pittsburgh.

FRANCIS N. THORPE.

Louisiana Testamentary Brevity

New Orleans, La., Feb. 22.—To the Editor: Yesterday I read the will of the late Chief Justice White, published in the last issue of the JOURNAL, because of being "remarkably concise," and read it with interest as a Louisiana lawyer and as an admirer of Justice White, who stood sponsor for my character when in the early eighties I applied to our Supreme Court for admission to the bar.

Conciseness, however, is not remarkable to a Louisiana lawyer in an olographic will where there is but one universal legatee. A Louisiana lawyer often suggests an olographic will in a similar case to be written thus:

I give and bequeath to my wife (blank) all the property, movable and immovable, which I may own (or leave, or possess) at my death, appointing her executrix of this will, without bond and with full seizin of my estate.

Some use the word *own*, some the word *leave*, and some prefer *possess*. A shorter form is this:

I hereby constitute (blank) my universal legatee, appointing her executrix of this will without bond and with detainer of my estate.

In Succession of Ehrenberg the following, dated and signed by the testator, was held a good olographic will (21 An. 281):

New Orleans, September 18, 1859.
Mrs. Sophie Loper is my heiress.

Justice White's will sins both with respect to conciseness and precision.

Three words, "give, bequeath, and devise," are used where one would suffice. I suppose that "devise" is a concession to common law terminology.

The phrase "complete and perfect ownership" is tautological in the extreme. "Perfect ownership" is the style of the definition of the code. Any ownership which is not perfect (and so not complete) is an "imperfect ownership," and might unscientifically be styled "incomplete."

Our code divides *things* (and the idea of things susceptible of ownership is conveyed by "property" or "estate") into immovables and movables. Even incorporeal rights, say the Code of Practice and the Civil Code, are placed in one of these two classes.

Equipping the words "right and property," etc., with the subordinate clause "whether real, personal, or mixed," is itself a mixture of ideas. Though in Louisiana we often familiarly speak of real or personal property, property is not divided into three classes, real, personal, and mixed, while "actions or rights" are. "The first division of actions is into personal, real, and mixed." Art. 2, C. P. The Justice was not bequeathing merely such actions or juridical rights as he might have, but such property as he owned, i. e., all his things movable and immovable, his rights and actions.

A mixed action is the familiar one of cumulating a demand for land with a demand for the crops which

the land had produced, or their value; but the land is an immovable, and the crops, if mobilized by gathering, movables.

The phrase "executrix of my estate" is technically incorrect. The Justice meant to say, "executrix of my will."

Louisiana lawyers frequently affix to the word "seizin" the adjective "full," or add the words "and detainer," to make sure that the "general seizin" of the estate is given the executor; the code authorizes use of the word "detainer."

JOHN F. C. WALDO.

(Note: Perhaps the learned testator expected that his will might operate on property in a common law jurisdiction and intended to take advantage of the technical meaning at common law of the words criticized as superfluous in Louisiana.)

A Solution of the Presidential "Inability" Problem

New York, Jan. 31.—To the Editor: After an interesting and instructive account of the history of the inability clause of the Federal Constitution, and of the inconclusive debates over it in and out of Congress, in the last number of this magazine, the able writer ends with a concise and pithy question, "In short, is not this a case where it is better to let sleeping dogs lie?" None but an affirmative answer can be given, so far as concerns action by Congress. There is, however, a phase of the subject which may be new to some, and should be presented.

If we will abandon all preconceptions, whether they grow out of party spirit, or ambition, or notions as to strict or liberal construction of the Constitution, and will examine the clause, in the light of its own clear and precise language, the solution of this century-old problem is very simple.

"In case of the removal of the president from office, or of his death, resignation, or inability to discharge the powers and duties of the said office, the same shall devolve upon the Vice-President."

There can be no question as to the meaning of any of those words, whether taken by themselves or in connection with each other, except one. That word is, "same." It may be asked, to which preceding word does it refer, to the office, or to the powers and duties thereof? That question finds a ready answer in the word "devolve." An office "passes" to another. It does not "devolve" upon another. Its powers and duties in a given instance do "devolve" upon another.

Hence it is clear that this clause should be construed as if it read that in the four events named the powers and duties of the office of President devolve upon the Vice-President.

This is borne out by the words which follow as to action "as president," and acting "accordingly until the disability be removed."

So, construing the section as a whole, it intends

- (1) to provide for all the possible cases which may occur—removal, death, resignation, or inability to discharge the duties of the office.
- (2) In such cases, it is not the office which passes to the Vice-President, it is the powers and duties thereof which devolve upon him.
- (3) He does not become President. He remains Vice-President "acting as President."
- (4) The first three events being final, he acts as such until a president shall be elected.

(5) The fourth may be temporary or permanent, it matters not which, for he is to act until it be removed.

It is of no consequence that, whether through ambition, party spirit, or any other prepossession, the clause may have been differently construed in practice in the past. It has never received judicial construction.

In the calm, clear atmosphere of the Supreme Court, actuated by no other impulse than a desire to expound the true meaning of this clause, what man, educated in the correct use of ordinary words in the English language, can doubt that the construction here given would be adopted by that tribunal?

If that is true, all talk of ousting the president from his office, in case of inability to discharge its duties, passes into nothingness. He remains President, and if he regains his ability to discharge the duties of his office, he resumes their discharge. If not, the Vice-President continues to act "as president," until a new president is elected.

Inability may be mental, or physical, long or short, full or partial. Whatever it is, it is a fact, and must be determined by some one. There can be no doubt as to the other three events, removal, death, or resignation. No dispute can arise as to them.

The case of inability is very different. But it remains a question of fact, none the less. Who is to decide it? My answer is to suggest a simple solution. Both. All that is needed is harmony between the President and Vice-President, instead of jealousy. There should always be harmony between the officials of the state. The President and Vice-President are now of the same political party. So that political differences would not cause discord.

If we adopt the idea that the Vice-President of our nation is, like all other vice-presidents an officer elected, not to oust a president but to act as president in case of inability of the President, all trouble over this clause of the Constitution will disappear.

The inability may be temporary due to a passing illness or absence from the seat of government. It may be total or partial. The President may be so overburdened with important matters of state, that he cannot find time, for example, to sign his name to the many documents which call for merely formal action. Is there any reason why he should not have the assistance of the Vice-President in such cases of inability to discharge all the powers and duties of the office? It should not be thought that this would degrade the Vice-President from a Presidential Possibility into a Rubber Stamp. There is no loss of dignity in a President in affixing his signature to various documents, which come before him as matters of routine. How then can there be any loss of dignity in a Vice-President in doing the same thing? Let the Vice-President be made a member of the cabinet. Not a line of legislation is needed. Nothing but an invitation of the President to become a member. Put him in close touch with the Administration. Make him an active part of it, so far as advice and counsel are concerned. Let him aid the President in the performance of such ministerial duties as they two shall decide. Thus he would receive a training for the more important duties that would devolve upon him, in the event of death of the President, or permanent mental inability to discharge them.

In short, let us rid ourselves of the prevalent conception of a Vice-President as an official who is only

waiting for a dead man's shoes, and meanwhile passes his time in presiding over the Senate. Let us take up the idea, wrapped up in the word "Vice-President." It is nothing more nor less, than that he is an official whose duty is to act as President, in the event that the President is, for any reason continuing or temporary, unable to act.

If we become possessed with that idea and apply it to the question in hand, there will no longer be any problem to solve.

Lastly if it be thought desirable to obtain a judicial construction of this clause, it would be easy to do so. The President could call upon the Vice-President to help him in getting rid of an accumulation of documents needing signature. The two could work together. The Vice-President signing his name, "acting as President." The validity of such action could then be questioned, and a case made for construction by the Supreme Court.

As the question is an important one and has received diverse answers for many years from many men, it might be as well to have it finally settled by the Supreme Court. It hangs upon the construction to be given to the word "same," that is to say whether in the four events named the devolution is of the office or of its powers and duties.

JOHN BROOKS LEAVITT.

Necrology

Death of Chief Justice Siebecker of Wisconsin

Robert G. Siebecker, Chief Justice of the Supreme Court of the State of Wisconsin, was sixty-eight years of age at the time of his death, February 12, 1922. He was born in Wisconsin of German parentage; educated in the common schools and in the University of Wisconsin; studied law at the Wisconsin College of Law; was admitted to practice in 1879; practiced at Madison until 1890, when he was elected Circuit Judge. He served as a Judge in one of the most important circuits in the State until 1903, and from 1903 until his death was a member of the Supreme Court. He thus pursued an uninterrupted career of thirty-two years upon the bench, and leaves a commendable record, commanding the approval of his associates, the bar, and the public generally.

In appearance the Chief Justice was a tall, well-formed, handsome man. He was quiet, dignified, kindly, and invariably courteous. There have been few, perhaps none, upon the bench in Wisconsin who knew so well how to announce a ruling from the bench, or direct the entry of a judgment without leaving a sting in the defeated party.

In 1876 he married Josephine LaFollette, the sister of Robert M. LaFollette, long a prominent member of the United States Senate. He was appointed an associate Justice to the Supreme Court in 1903 by Senator LaFollette, who was then Governor of the State. The intimate association of these two men for nearly fifty years appears never to have been interrupted.

Philip Alston Willcox

As the result of complications following an attack of influenza, P. A. Willcox, representative of the State of South Carolina on the General Council of the American Bar Association, died at his home, Florence, S. C., February 16th, 1922. Mr. Willcox was

born in Marion, S. C., December 8th, 1866, and graduated from the University of South Carolina in 1887. He had long been a member of the American Bar Association, and in 1920 was President of the Bar Association of his State. He was not only regarded as a leader of the bar of his State, but of the entire South. Besides representing other large corporate interests, at the time of his death, and for several years prior thereto, he was General Solicitor of the Atlantic Coast Line Railway Company. He leaves a widow, two sons and a daughter.

Judge William A. Kinkaid

Manila's legal community assembled on Sunday morning, January 22, 1922, to pay tribute to the memory of Judge William Abraham Kinkaid, one of the first judges appointed to the judiciary of the Philippine Islands. Judge Kinkaid died in the city of Los Angeles, California, on the fourth of the same month after an illness of several months. At the services were the Justices of the highest tribunal, under whose auspices the program was held, and the leading lawyers of the Islands. It was a remarkable tribute; the Arellano building was crowded. The judge's son, now a member of the firm to which his father belonged, was present. The principal addresses were delivered by his late law partner, E. Arthur Perkins, and Mr. Justice E. Finlay Johnson of the Supreme Court of the Philippine Islands.

"He possessed the virtues and the best traditions of the calling which inspire, not only in the forum but also in the people, confidence and adhesion to the principles of the famous instructions of President McKinley. Aristocratic in deportment and intelligence, but eminently democratic in his habits and education, he attracted the sympathies and affection of all those who met him. . . . Numbers of lawyers and law students went into the courts just to hear Kinkaid display the resources of a mighty mind. Clear and methodical in exposition, terribly grilling in cross-examination, formidable in attack, eloquent and forceful in speech, the legal fights in which he fought constituted a school for those who knew him." This was the remarkable language of Judge José C. Abreu, a Filipino, who like Judge Kinkaid, has resigned from the bench to practice at the bar.

Justice Johnson's position at the services was particularly conspicuous due to the fact that out of the first nine judges who were sent by President McKinley to the Philippines in 1900, he is now the only one alive. Justice Johnson traced the career of Judge Kinkaid and paid a fitting tribute to his achievements in the law.

John S. Miller

John S. Miller, a leading lawyer of Chicago and one of the best known members of the bar of the country, died on Feb. 16 at his home in Chicago at the age of 74. He was senior partner of the firm of Miller, Starr, Brown, Packard and Peckham. One of the most famous of the legal battles in which he was engaged was the case of the United States against the Standard Oil Company, in which he appeared for the defendant. A fine of \$29,000,000 was imposed on the company in the lower court, but he won the case on appeal. He also represented certain packers in the so-called "Beef Trust Case" in 1905.

The Coming Annual Meeting

Some of the Climatic and Other Advantages of San Francisco in August—California Committee of Arrangements Is Active

San Francisco, Cal., March 1.—That the meeting of the American Bar Association in San Francisco August 9, 10 and 11 is to be California's most notable convention is the belief of the lawyers who are putting into the preparations for it all of San Francisco's "know how" spirit.

The Executive Committee of Arrangements of the California Bar Association, of which Beverly L. Hodghead, Senior Vice-President of the Bar Association of San Francisco is Chairman, is rapidly getting its program into shape. Sub-Committees have been organized and are functioning and the tentative program of entertainment has been discussed. Headquarters have been opened at Room 215, Holbrook building, with Andrew Y. Wood, Managing Editor of *The Recorder*, the lawyers' newspaper, in charge, and through that office all business pertaining to the Convention will be transacted.

The message concerning this convention is being gotten to the lawyers of the State through a series of meetings. On the evening of February 23, Chairman Beverly L. Hodghead addressed the Santa Clara Bar Association at a well attended meeting at San Jose. He emphasized the necessity for united effort on the part of the lawyers of California to make of this meeting the most successful in the history of the American Bar Association. He also pointed out that certain guarantees had been given to the Executive Committee with regard to a greatly increased membership, not alone in California but in the entire "region of the Pacific," which obligations must be met in order that the American Bar Association may become a truly national organization. Early in March a similar meeting is to be held in Oakland, at which time the Alameda County Association will be "stirred up."

August will be a splendid month in San Francisco. The lawyers coming across the great sagebrush plains or across the desert of Arizona, out of the blistering heat of the east, will come down from the mountains into the pleasant valleys of California, with their great expanse of green fields and heavily fruited orchards, through great vineyards with the new grapes just beginning to purple in the summer sun, past vast fields of alfalfa, down to the great bay of San Francisco, glistening in the sun and rippled by cool breezes from the great Pacific beyond whose vast expanse lie the "problems" that have been so happily and so recently settled at Washington.

There in the cool shadow of beautiful Tamalpais, in a series of bright, cool, rainless days, the delegates to the American Bar Association will be able to hold their deliberations. There is no convention city so favored in the United States as is San Francisco, with its marvelous surroundings of bay, ocean and hills, its immediate vicinage of mountains, redwood-grown canyons, oak covered slopes, its great universities, its beautiful public buildings, its extensive parks and boulevards and its great business district.

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MISCELLANY

Brief contributions of legal anecdotes, legal curiosities of all kinds, and other matters likely to afford variety and interest to a department of Miscellany are invited from the readers of the Journal.

Business Management in an Ancient Roman Law Office

"In Rome the advocate appeared in the role of the friend and patron of justice, and his dignity would not permit him to stoop to bargain for remuneration or to bring an action to enforce a claim therefor. It has been said in one well-considered case (*Christin v. Lacosti*, 2 Que. Q. B. 142, 147), that the honorarium of the advocate in Rome was not only paid but exacted and that there is no doubt that it was at the instigation of the profession itself that the right to enforce payment of fees by suit was taken away in order to give the excuse of insisting on payment in advance. That the effect, if calculated, was well considered, is shown by the fact that, in our currency, the total honoraria of Cicero are said to have aggregated at least \$1,000,000. If there was no income tax prevalent in those days, Cicero did very well on an honorarium basis."—From Address by Herbert T. Morrow before Los Angeles Bar Association.

Judicial Notice of Modern Literary Tendencies

Authors of "free verse" and exponents of various other queer tendencies in modern literature should find much comfort in a recent decision of the U. S. Court for the Southern District of New York on the question of what constitutes "writing." (*Reiss vs. National Quotation Bureau, Inc.*, 276 Fed., 717). The point to be decided was whether a cable code book containing coined words having no known meaning is the writing of an author within Art. 1, Sec. 8 of the Federal Constitution and a proper subject for copyright under the act of March 4, 1909. The court held it was and made the following liberal observations as to what might be included in the term "writing":

"Not all words communicate ideas; some are mere spontaneous ejaculations. Some are used for their sound alone, like nursery jingles, or the rhymes of children in their play. Might not some one, with a gift for catching syllables, devise others? There has of late been prose written, avowedly senseless, but designed by its sound alone to produce an emotion. Conceivably there may arise a poet who strings together words without rational sequence—perhaps even coined syllables—through whose beauty, cadence, meter, and rhyme he may seek to make poetry. Music is not normally a representative art, yet it is a 'writing.' There are meaningless rhymes—e. g., 'Barbara celarent' which boys use in their logic, or to remember their paradigms or the rules of grammar.

"Works of plastic art need not be pictorial. They may be merely pat-

terns, or designs, and yet they are within the statute. A pattern or an ornamental design depicts nothing; it merely pleases the eye. If such models or paintings are 'writings' I can see no reason why words should not be such because they communicate nothing. They may have their uses for all that, aesthetic or practical, and they may be the productions of high ingenuity, or even genius. Therefore, on principle, there appears to me no reason to limit the constitution in any such way as the defendants require."

Responsibilities of Drawing Wills

"I hope you will not make the mistake of looking upon your client's will as merely a piece of paper. A will is different from every other legal document. It is in legal effect your client's last words spoken in this life. It is not the dry, legal document which the lawyer usually writes. It drinks from the fountain springs of love, and it plays upon every chord of the human emotions. Upon you, as his attorney, will rest the duty of writing the document to carry out your client's wishes, and you should not underestimate your responsibility. While the writing of a client's will may be a complicated matter, yet you will find that your skill as an attorney in writing wills should increase with your study and experience in life; and you will find as your reputation for skillful work increases, you will be sought after by clients who have wills to be written. But no matter what skill and experience you may possess, you must remember that the lawyer can only advise, and that upon the client rests the final responsibility for the wisdom of his plans. It must be your client's will, and not yours."—From an Address by Edward W. Faith, of Mobile, Ala., to the Law Classes of the University of Alabama.

A Paladin of Jurisprudence

"The death of Lord Bryce at the great age of eighty-four removes one who may fairly be called the 'Last of the Paladins' of the Victorian Age of Jurisprudence. Like the late Professor Maitland and Sir William Anson, he was one of the masculine spirits who helped to build up a classical English attitude towards the Science of Law as a living thing and not an encyclopaedia of formulas. Professor Dicey and Sir Frederick Pollock are still with us; but they belong to a more realistic age of scholarship; and Professor Vinogradoff is quite one of the Moderns. But Lord Bryce wrote and thought in the grand style, almost as Gibbon or Hallam had done in earlier ages. Yet there was nothing reactionary about him. In thought and in action he was a progressive in his own age; but a deep-rooted academic instinct of conservatism made

him one of the old school in all matters of form and intellectual deportment as distinct from the deeper aspects of knowledge."—The Solicitors' Journal and Weekly Reporter, January 28, 1922.

Anecdotes of Erskine

"During the lifetime of Lord Erskine, an invasion by the French of the British Isles was threatened and the lawyers from the Temple and Inns of Court formed themselves into a regiment, and Lord Erskine, then Honorable Mr. Erskine, was appointed their Colonel. When they were reviewed in Hyde Park by King George the Third, His Majesty was pleased with their appearance and said to Mr. Erskine: 'Colonel, what name is your regiment called by?' To which Colonel Erskine, saluting, responded, 'The Devil's Own, Your Majesty.' On another occasion, a house formerly occupied by an eminent barrister having been rented by an ironmonger, Mr. Erskine penned the following doggerel: 'This house where once a lawyer dwelt,

Is now a smith's, alas!
How rapidly the iron age,
Succeeds the age of brass.'"

—From an address by Mr. Robert R. Williams, of Asheville, N. C., at the Twenty-second Annual Meeting of the North Carolina Bar Association.

Should Have Followed Attorney's Advice

John had been in love with Emma a long time but had never gotten up the courage to assume the responsibility of putting the question. Finally one day John took Emma riding. After riding four or five miles, he said, "Emma, will you marry me?" And she said, "Yes, John, I will." And they rode on four or five miles further and nothing more was said. And finally Emma said, "John, haven't you got anything else to say?" And John said, "No, Emma, I have said too damn much already."—Told by A. M. Garber at the Forty-Fourth Annual Meeting of the Alabama State Bar Association at Birmingham.

Curios of Somerset House

All wills for which probate is granted are filed in Somerset House. They can be inspected by the public on the payment of a fee. The only exception to the above rule applies to the wills of the king and queen of England. . . . Shakespeare's will with its remarkable signature, Nelson's will written in a common or garden exercise book on the eve of Trafalgar, and which toward the conclusion contains these words, "The enemy are now in sight—," a soldier's will made in a black-covered note book through which a bullet has passed without making it illegible—these and many more go to make a collection that many a curio hunter would give his soul to possess.—Solicitor in London Daily Mail.